

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

In the Matter of	)	
	)	File No. EB-06-SE-327
Ted Sakaida & Sons, Inc.	)	NAL/Acct. No. 200732100034
Van Nuys, California	)	FRN # 0001519164
	)	

**NOTICE OF APPARENT LIABILITY FOR FORFEITURE**

**Adopted: May 29, 2007**

**Released: May 31, 2007**

By the Chief, Spectrum Enforcement Division, Enforcement Bureau:

**I. INTRODUCTION**

1. In this *Notice of Apparent Liability for Forfeiture*, we find Ted Sakaida & Sons, Inc. d/b/a Ted Sakaida & Sons Trucking (“Sakaida”), former licensee of Private Land Mobile Radio Service (“PLMRS”) station WIM375, Van Nuys, California, apparently liable for a forfeiture in the amount of five thousand, two hundred dollars (\$5,200) for operating its PLMRS station without Commission authority and for failing to file a timely renewal application for the station. Sakaida acted in apparent willful and repeated violation of Section 301 of the Communications Act of 1934, as amended, (“Act”)<sup>1</sup> and Sections 1.903(a) and 1.949(a) of the Commission’s Rules (“Rules”).<sup>2</sup>

**II. BACKGROUND**

2. On June 19, 2006, Sakaida filed a request for Special Temporary Authority (“STA”) to continue operating its PLMRS station WIM375 because the station license had expired on June 26, 2005.<sup>3</sup> The Wireless Telecommunications Bureau (“WTB”) granted Sakaida STA to continue operating the station under call sign WQFD608 on June 21, 2006.<sup>4</sup> On November 28, 2006, Sakaida filed for renewal of the STA for station WQFD608, which WTB granted on November 29, 2006, giving Sakaida authority to operate through May 28, 2007.<sup>5</sup> Also on November 28, 2006, Sakaida filed an application for renewal

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<sup>1</sup> 47 U.S.C. § 301.

<sup>2</sup> 47 C.F.R. §§ 1.903(a) and 1.949(a).

<sup>3</sup> On June 20, 2006, Sakaida filed a Petition for Reconsideration and Request for Reinstatement of Authorization (“Petition”) seeking to have the expired authorization for Station WIM375 reinstated. On March 9, 2007, the WTB dismissed and denied Sakaida’s Petition (*see* Letter from Lloyd W. Coward, Deputy Chief, Mobility Division, Wireless Telecommunications Bureau to Robert J. Keller, Esq., Counsel for Ted Sakaida & Sons Trucking (March 9, 2007) (“WTB Letter”).

<sup>4</sup> STA File No. 0002655701 (granted June 21, 2006). The Wireless Telecommunications Bureau granted the STA on a secondary, non interference basis because the frequency formerly assigned to Sakaida had been reassigned to another licensee after Sakaida’s license expired. In addition, the STA was granted without prejudice to any future FCC enforcement action against the company in connection with unauthorized operation of its radio facilities.

<sup>5</sup> File No. 0002830194 (granted November 29, 2006).

of the license for station WIM375, along with a waiver request to permit it to file the application late.<sup>6</sup>

3. Because it appeared that Sakaida may have operated the PLMRS station after the expiration of its license under call sign WIM375, the WTB referred this case to the Enforcement Bureau for investigation and possible enforcement action. On November 2, 2006, the Enforcement Bureau's Spectrum Enforcement Division issued a letter of inquiry ("LOI")<sup>7</sup> to Sakaida seeking information regarding its failure to renew the station license, and its operation of the station beyond the license expiration date.

4. In its December 4, 2006 response to the LOI,<sup>8</sup> Sakaida states that between March 27 and May 9, 2000, it submitted an application to renew the license for station WIM375.<sup>9</sup> The license was renewed on May 9, 2000 with an expiration date of June 26, 2005. Sakaida states that because it did not receive a copy of the new license, it was not aware that the Commission had taken action on the renewal application, and thus, was not aware of the new expiration date.<sup>10</sup> Sakaida contends that until it was advised by the Commission that action had been taken on the renewal application, it was reasonable for it to assume that it continued to have operating authority pursuant to Section 9(b) of the Administrative Procedure Act ("APA"), 5 U.S.C § 558(c).<sup>11</sup> Sakaida further surmises that, although the Universal Licensing System database indicates that a renewal reminder was sent on or about April 4, 2005, it did not receive the renewal notice or the new license because the documents were sent to "7412, Van Nuys, CA 91409" rather than to Sakaida's correct address which is "P.O. Box 7412, Van Nuys, CA 91409."<sup>12</sup> Sakaida admits that it continued to operate the station after June 26, 2005, but states that it did so because it was not aware that its license for station WIM375 had expired. Finally, Sakaida asserts that upon learning of the expiration of the license it took immediate steps to obtain Commission authority to operate by filing a request for STA.<sup>13</sup>

### III. DISCUSSION

5. Section 301 of the Act and Section 1.903(a) of the Rules prohibit the use or operation of any apparatus for the transmission of energy or communications or signals by a wireless radio station except under, and in accordance with, a Commission granted authorization. Additionally, Section 1.949(a) of the Rules requires that licensees file renewal applications for wireless radio stations, "no later than the expiration date of the authorization for which renewal is sought, and no sooner than 90 days prior

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<sup>6</sup> File No. 0002830185.

<sup>7</sup> See Letter from Ricardo M. Durham, Senior Deputy Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission to Ted Sakaida & Sons, Inc. d/b/a Ted Sakaida & Sons Trucking (November 2, 2006).

<sup>8</sup> See Letter from Robert J. Keller, Counsel for Ted Sakaida & Sons, Inc. d/b/a Ted Sakaida & Sons Trucking to Ricardo M. Durham, Senior Deputy Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission (December 4, 2006) ("LOI Response").

<sup>9</sup> *Id.* at 1.

<sup>10</sup> *Id.* at 1-2.

<sup>11</sup> *Id.* at 1, note 2.

<sup>12</sup> *Id.* at 2.

<sup>13</sup> *Id.* at 2.

to expiration.<sup>14</sup> Absent a timely filed renewal application, a wireless radio station license automatically terminates.<sup>15</sup>

6. As a Commission licensee, Sakaida was required to maintain its authorization in order to operate its PLMRS station. Sakaida admitted that it operated the PLMRS station without Commission authority from the station's license expiration date of June 26, 2005<sup>16</sup> until June 21, 2006, when it was granted STA to operate the station under call sign WQFD608. By operating its PLMRS station for approximately one year without an instrument of authorization, Sakaida apparently violated Section 301 of the Act and Section 1.903(a) of the Rules. Sakaida also acted in apparent violation of Section 1.949(a) of the Rules by failing to file a timely renewal application for the station.

7. Section 503(b) of the Act<sup>17</sup> and Section 1.80(a) of the Rules<sup>18</sup> provide that any person who willfully or repeatedly fails to comply with the provisions of the Act or the Rules shall be liable for a forfeiture penalty. For purposes of Section 503(b) of the Act, the term "willful" means that the violator knew that it was taking the action in question, irrespective of any intent to violate the Commission's rules, and "repeatedly" means more than once.<sup>19</sup> Based upon the record before us, it appears that Sakaida's violations of Section 301 of the Act and Sections 1.903(a) and 1.949(a) of the Rules were willful and repeated.

8. In determining the appropriate forfeiture amount, Section 503(b)(2)(E) of the Act directs us to consider factors, such as "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 such other matters as justice may require."<sup>20</sup> Having considered the statutory factors, as explained below, we propose a total forfeiture of \$5,200.

9. Section 1.80(b) of the Rules sets a base forfeiture amount of three thousand dollars (\$3,000) for failure to file required forms or information and ten thousand dollars (\$10,000) for operation of a station without Commission authority.<sup>21</sup> The Commission has recently held that a licensee's failure

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<sup>14</sup> 47 C.F.R. § 1.949(a).

<sup>15</sup> 47 C.F.R. § 1.955(a)(1).

<sup>16</sup> LOI Response at 2.

<sup>17</sup> 47 U.S.C. § 503(b).

<sup>18</sup> 47 C.F.R. § 1.80(a).

<sup>19</sup> See *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387 (1991), *recon. denied* 7 FCC Rcd 3454 (1992); see also *WCS Communications, Inc.*, Notice of Apparent Liability, 13 FCC Rcd 6691 (WTB, Enf. and Consumer Info. Div., 1998) (finding that a licensee's inadvertent failure to file timely renewal applications constitutes a repeated violation that continues until the date the license is renewed). See also Sections 312(f)(1) and (2) of the Act, 47 U.S.C. § 312(f)(1) and (2), which apply to violations for which forfeitures are assessed under Section 503(b) of the Act ("[t]he term 'willful,' ... 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..." and a violation is "repeated" if it continues for more than one day).

<sup>20</sup> 47 U.S.C. § 503(b)(2)(E). See also 47 C.F.R. § 1.80(b)(4), Note to paragraph (b)(4): Section II. Adjustment Criteria for Section 503 Forfeitures; see also *Forfeiture Policy Statement*, Report and Order, 12 FCC Rcd 17087, 17110 (1997), *recon. denied* 15 FCC Rcd 303 (1999).

<sup>21</sup> 47 C.F.R. 1.80(b).

to timely file a renewal application and its continued operations without authorization constitute separate violations of the Act and the Rules, and warrant the assessment of separate forfeitures.<sup>22</sup> Accordingly, we herein propose separate forfeiture amounts for Sakaida's separate violations.

10. We propose a forfeiture of \$5,000 for Sakaida's continued operation of station WIM375 beyond June 26, 2005. In proposing \$5,000 for the station's unauthorized operations we recognize that the Commission considers a licensee who operates a station with an expired license in better stead than a pirate broadcaster who lacks prior authority, and thus downwardly adjust the \$10,000 base forfeiture amount accordingly.<sup>23</sup> The \$5,000 forfeiture relates to Sakaida's apparent violations that occurred within the past year, but takes into account that those apparent violations were continuous in nature.<sup>24</sup> Additionally, consistent with precedent,<sup>25</sup> we propose a \$1,500 forfeiture for Sakaida's failure to file a renewal application for its station within the time period specified in Section 1.949(a) of the Rules. Thus, we propose an aggregate forfeiture of \$6,500 (\$5,000 for unauthorized operations and \$1,500 for failure to timely file a renewal application).

11. Sakaida argues that it was reasonable for it to assume that it continued to have operating authority pursuant to Section 558(c) of the APA until it was advised by the Commission that it had acted on the renewal application. We do not agree. Section 558(c) of the APA provides that "[w]hen the licensee has made timely and sufficient application for a renewal or a new license in accordance with agency rules, a license with reference to an activity of a continuing nature does not expire until the

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<sup>22</sup> See *Discussion Radio, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability, 19 FCC Rcd 7433, 7438 (2004) (proposing forfeitures of \$5,000 and \$1,500 against a broadcaster who both operated its station for 14 months without Commission authority and failed to timely file its renewal application) ("*Discussion Radio*").

<sup>23</sup> See *Discussion Radio*, 19 FCC Rcd at 7438 (proposing a \$5,000 forfeiture for operating a station for 14 months beyond the expiration of its license); *Shared Data Networks, LLC*, Notice of Apparent Liability for Forfeiture, 20 FCC Rcd 18184, 18186-18187 (Enf. Bur., Spectrum Enf. Div., 2005) ("*Shared Data*") (proposing an \$18,000 forfeiture – \$6,000 per earth station – for unauthorized operation over a period of 5 years); *Journal Broadcast Corporation*, Notice of Apparent Liability for Forfeiture, 20 FCC Rcd 18211, 18213 (Enf. Bur., Spectrum Enf. Div., 2005) ("*Journal Broadcast*") (proposing a \$5,000 forfeiture for unauthorized operation for 1 year).

<sup>24</sup> Section 503(b)(6) of the Act, 47 U.S.C. § 503(b)(6) prohibits the assessment of a forfeiture for violations that occurred more than a year prior to the NAL, but does not bar us from taking into account the continuous nature of violations in determining the appropriate enforcement action and/or forfeiture amount. See, e.g., *Globcom, Inc. d/b/a Globcom Global Communications*, Notice of Apparent Liability for Forfeiture and Order, 18 FCC Rcd 19893, 19903 (2003), *forfeiture ordered*, 21 FCC Rcd 4710; *Roadrunner Transportation, Inc.*, Forfeiture Order, 15 FCC Rcd 9669, 9671-72 (2000); *Cate Communications Corp.*, Memorandum Opinion and Order, 60 RR 2d 1386, 1388 (1986); *Eastern Broadcasting Corp.*, Memorandum Opinion and Order, 10 FCC 2d 37, 37-38 (1967), *recon. denied*, 11 FCC 2d 193, 195 (1967); *Bureau D'Electronique Appliquee, Inc.*, Notice of Apparent Liability for Forfeiture, 20 FCC Rcd 3445, 3447-48 (Enf. Bur., Spectrum Enf. Div., 2005), *forfeiture ordered*, 20 FCC Rcd 17893 (Enf. Bur., Spectrum Enf. Div., 2005).

<sup>25</sup> See *Discussion Radio*, 19 FCC Rcd at 7438 (proposing a \$1,500 forfeiture for failure to timely file a renewal application for a broadcast station); *Shared Data*, 20 FCC Rcd at 18187 (proposing an aggregate forfeiture amount of \$4,500 for failure to timely file renewal applications for 3 earth stations); *Journal Broadcast*, 20 FCC Rcd at 18213 (proposing a \$1,500 forfeiture for failure to timely file a renewal application for an earth station); *Self Communications, Inc.*, Order and Notice of Apparent Liability, 15 FCC Rcd 18661, 18664-65 (WTB, Public Safety and Private Wireless Div., 2000) (proposing a \$1,500 forfeiture for failure to timely file a renewal application for a 218-219 MHz service); *Vincent Communications, Inc.*, Notice of Apparent Liability for Forfeiture, 15 FCC Rcd 8432 (WTB, Enf. and Consumer Info. Div., 1999) (proposing an aggregate \$4,500 forfeiture for failure to timely file renewal applications for 3 paging stations), *forfeiture ordered*, 15 FCC Rcd 18263 (Enf. Bur. 2000).

application has been finally determined by the agency.” In this case, Sakaida’s application was finally determined by the Commission when the license for station WIM375 was renewed on May 9, 2000 with an expiration date of June 26, 2005. Even absent the receipt of actual knowledge of Commission action on the application, we believe it to be unreasonable for Sakaida to assume that the statute would convey authority for operation beyond the actual license term for which Sakaida applied via its renewal application. It is not the Commission’s obligation to ensure that the licensee is informed; rather it is the licensee’s responsibility to ensure that it is informed. Sakaida has provided no evidence that it exercised due diligence in prosecuting the application by checking on its status at any time after its filing. As a Commission licensee, Sakaida is charged with the responsibility of knowing and complying with the terms of its authorizations (including STAs), the Act and the Rules.<sup>26</sup> Inherent in this responsibility is the obligation to follow-up on an application that was filed in May, 2000, for which no response has been received, at some point before the license expired five years later on June 26, 2005.

12. As for Sakaida’s arguments regarding the possibility that the Commission sent pertinent documents to an incorrect address, we note that the WTB has already addressed these arguments in its response to Sakaida’s Petition for Reconsideration and Request for Reinstatement of Authorization and found them to be without merit.<sup>27</sup> We see no reason to revisit the issues here. We do find, however, that a downward adjustment of the proposed forfeiture from \$6,500 to \$5,200 is warranted because Sakaida made voluntary disclosures to Commission staff and undertook corrective measures after learning of its violations *prior* to any Commission inquiry or initiation of enforcement action.<sup>28</sup>

#### IV. ORDERING CLAUSES

13. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Act<sup>29</sup> and Sections 0.111, 0.311 and 1.80 of the Rules,<sup>30</sup> Ted Sakaida & Sons Trucking **IS** hereby **NOTIFIED** of its **APPARENT LIABILITY FOR A FORFEITURE** in the amount of five thousand, two hundred dollars (\$5,200) for the willful and repeated violation of Section 301 of the Act and Sections 1.903(a) and

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<sup>26</sup> *Lockheed Martin Corporation*, Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 4116, 4118 (Enf. Bur. 2007).

<sup>27</sup> See WTB Letter at 5 (finding Sakaida’s contention of incorrect mailing to be unsupported based on the evidence and noting that each licensee is fully responsible for knowing the terms and duration of its licenses and for filing a timely renewal application), citing *Biennial Regulatory Review – Amendment of Parts 0, 1, 13, 22, 24, 26, 27, 80, 87, 90, 95, and 101 of the Commission’s Rules to Facilitate Development and Use of the Universal Licensing System in the Wireless Telecommunications Service*, Memorandum Opinion and Order on Reconsideration, 14 FCC Rcd 11476, 11486 (1999); see also, *Disneyland Resort*, Order, 21 FCC Rcd 536, 537-38 (WTB PSPWD 2006) (holding that “each licensee is fully responsible for knowing the terms and duration of its license and for filing a timely renewal application”); *Sierra Pacific Power Company*, Order, 16 FCC Rcd 188, 191 (WTB PSPWD 2001) (holding that “each licensee bears the exclusive responsibility of filing a timely renewal application”); *Alameda-Contra Costa Transit District Private Land Mobile Stations KBY746, WFS916, and KM8643*, Order, 15 FCC Rcd 24547, 24551 (WTB PSPWD 2000) (holding that “each licensee is responsible for knowing the expiration date of its licenses and submitting a renewal of license application in a timely manner”); *World Learning*, Order, 15 FCC Rcd 23871, 23872 (WTB PSPWD 2000) (holding that licensee “is solely responsible for filing a timely renewal application”); *First National Bank of Berryville*, Order, 15 FCC Rcd 19693, 19696 (WTB PSPWD 2000) (holding that “it is the responsibility of each licensee to renew its application prior to the expiration date of the license”); *Montana Power Company*, Order, 14 FCC Rcd 21114, 21115 (WTB PSPWD 1999) (holding that “it is the responsibility of each licensee to apply to renew its license prior to the license’s expiration date”).

<sup>28</sup> See *Petracom of Texarkana, LLC*, Forfeiture Order, 19 FCC Rcd 8096, 8097-8098 (Enf. Bur., 2004).

<sup>29</sup> 47 U.S.C. § 503(b).

<sup>30</sup> 47 C.F.R. §§ 0.111, 0.311 and 1.80.

1.949(a) of the Rules.

14. **IT IS FURTHER ORDERED** that, pursuant to Section 1.80 of the Rules,<sup>31</sup> within thirty days of the release date of this *Notice of Apparent Liability for Forfeiture*, Ted Sakaida & Sons Trucking **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

15. 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 above. 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. A request for full payment under an installment plan should be sent to: Associate Managing Director-Financial Operations, 445 12<sup>th</sup> Street, S.W., Room 1-A625, Washington, D.C. 20554.<sup>32</sup>

16. The response, if any, must be mailed to the Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554, ATTN: Enforcement Bureau – Spectrum Enforcement Division, and must include the NAL/Acct. No. referenced in the caption.

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

18. **IT IS FURTHER ORDERED** that a copy of this *Notice of Apparent Liability for Forfeiture* shall be sent by first class mail and certified mail return receipt requested to Ted Sakaida & Sons Trucking, P.O. Box 7412, Van Nuys, CA 91409 and its counsel, Robert J. Keller, Esq., Law Office of Robert J. Keller, P.C., P.O. Box 33428, Washington, DC 20033.

#### FEDERAL COMMUNICATIONS COMMISSION

Kathryn S. Berthot  
Chief, Spectrum Enforcement Division  
Enforcement Bureau

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<sup>31</sup> 47 C.F.R. § 1.80.

<sup>32</sup> See 47 C.F.R. § 1.1914.