

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

In the Matter of)	
)	
Colorado River Adventures)	File No.: EB-FIELDWR-12-00002816
)	NAL/Acct. No.: 201332940001
Parker, Arizona)	FRN: 0021816806
)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: March 1, 2013

Released: March 4, 2013

By the District Director, San Diego District Office, Western Region, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture (NAL), we find that Colorado River Adventures (CRA) apparently willfully and repeatedly violated Section 301 of the Communications Act of 1934, as amended (Act),¹ by operating a land mobile station in Julian, California, without the requisite Commission authorization. We conclude that CRA is apparently liable for a forfeiture in the amount of twelve thousand dollars (\$12,000).

II. BACKGROUND

2. On June 1, 2012, agents from the Enforcement Bureau's San Diego Office (San Diego Office) investigated complaints that unauthorized transmissions on 151.865 MHz from KQ Ranch in Julian, California, were causing interference to licensed users in the area.² The KQ Ranch Operations Manager advised the agents that the corporate owners, Colorado River Adventures, sent KQ Ranch twelve handheld land mobile radios about two or three years earlier and that those radios had been in use since that time. The Operations Manager could not locate a license for the radios.³ The San Diego agents examined the handheld radios and determined that the radios were transmitting on frequency 154.600 MHz, and that several of the handhelds were producing spurious emissions on frequency 151.865 MHz.⁴

3. On August 20, 2012, the San Diego Office issued a letter of inquiry (*LOI*) to CRA.⁵ In its reply, CRA stated that they were unaware that they were violating any FCC Rules and that they did not

¹ 47 U.S.C. § 301.

² Specifically, YMCA, licensee of Station KNNQ698, in Julian, California, contacted KQ Ranch approximately one year earlier about the unlicensed operation and interference to YMCA's licensed operations.

³ On June 18, 2012, an additional search of the FCC's databases by the San Diego Office revealed that no licenses had been issued for KQ Ranch's operations.

⁴ At the end of the inspection, the agents warned the Operations Manager about unlicensed operation, and the Operations Manager agreed to stop using the radios until they obtained an FCC license.

⁵ See Letter of Inquiry from James T. Lyon, District Director, San Diego Office, Western Region, FCC Enforcement Bureau, to Colorado River Adventures (Aug. 20, 2012) (on file in EB-FIELDWR-12-00002816).

know precisely when radio operations began at their parks.⁶ They also stated that they were now operating pursuant to an FCC license.⁷

III. DISCUSSION

4. Section 503(b) of the Act 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.⁸ Section 312(f)(1) of the Act defines “willful” as the “conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate” the law.⁹ 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 Act¹⁰, and the Commission has so interpreted the term in the Section 503(b) context.¹¹ The Commission may also assess a forfeiture for violations that are merely repeated, and not willful.¹² The term “repeated” means the commission or omission of such act more than once or for more than one day.¹³

A. Unlicensed Operation in the Private Land Mobile Radio Service

5. The record evidence is sufficient to establish that Colorado River Adventures violated Section 301 of the Act. Section 301 of the Act states that no person shall use or operate any apparatus for the transmission of energy or communications or signals by radio within the United States, except under and in accordance with the Act and with a license granted under the provisions of the Act.¹⁴ On June 1, 2012, agents from the San Diego Office determined that an unlicensed land mobile radio system was operating on frequency 154.600 MHz from KQ Ranch, Julian, California, and causing spurious emissions on frequency 151.865 MHz. Colorado River Adventures acknowledged that they did not have an FCC

⁶ See Letter from Mark Wade, Director of Operations, Colorado River Adventures, to James T. Lyon, District Director, San Diego Office, Western Region, FCC Enforcement Bureau (Sept. 6, 2012) (on file in EB-FIELDWR-12-00002816) (*LOI Response*).

⁷ A land mobile license, call sign WQPW239, was issued to CRA on August 28, 2012. See File No. 0005264527, filed June 15, 2012.

⁸ 47 U.S.C. § 503(b).

⁹ 47 U.S.C. § 312(f)(1).

¹⁰ H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982) (“This provision [inserted in section 312] defines the terms ‘willful’ and ‘repeated’ for purposes of section 312, and for any other relevant section of the act (e.g., section 503) . . . As defined[,] . . . ‘willful’ means that the licensee knew that he was doing the act in question, regardless of whether there was an intent to violate the law. ‘Repeated’ means more than once, or where the act is continuous, for more than one day. Whether an act is considered to be ‘continuous’ would depend upon the circumstances in each case. The definitions are intended primarily to clarify the language in Sections 312 and 503, and are consistent with the Commission’s application of those terms . . .”).

¹¹ See, e.g., *Application for Review of Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991), *recons. denied*, 7 FCC Rcd 3454 (1992).

¹² See, e.g., *Callais Cablevision, Inc.*, Notice of Apparent Liability for Monetary Forfeiture, 16 FCC Rcd 1359, 1362, para. 10 (2001) (“*Callais Cablevision, Inc.*”) (proposing a forfeiture for, *inter alia*, a cable television operator’s repeated signal leakage).

¹³ Section 312(f)(2) of the Act, 47 U.S.C. § 312(f)(2), which also applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that “[t]he term ‘repeated’, when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day.” See *Callais Cablevision, Inc.*, 16 FCC Rcd at 1362.

¹⁴ 47 U.S.C. § 301.

authorization to operate a land mobile system in the Julian, California, area. The violation was repeated because it occurred on more than one day. The violation was willful because CRA consciously and deliberately used its land mobile radios on the frequency 154.600 MHz, which resulted in spurious emissions on frequency 151.865 MHz, and did not have the requisite Commission authorization for such operation. Consequently, we find that CRA apparently willfully and repeatedly violated Section 301 of the Act.

B. Proposed Forfeiture Amount

6. Pursuant to the Commission's *Forfeiture Policy Statement* and Section 1.80 of the Commission's rules (Rules), the base forfeiture amount for operation of a station without an instrument of authorization is \$10,000.¹⁵ In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(E) of the Act, which include 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 other such matters as justice may require.¹⁶ Applying the *Forfeiture Policy Statement*, Section 1.80 of the Rules, and the statutory factors to the instant case, we conclude that an upward adjustment of \$2,000 is warranted based on the length of the unlicensed operation, and that CRA is therefore apparently liable for a forfeiture in the amount of \$12,000.

IV. ORDERING CLAUSES

7. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.111, 0.204, 0.311, 0.314, and 1.80 of the Commission's rules, Colorado River Adventures is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of twelve thousand dollars (\$12,000) for apparently willfully and repeatedly violating Section 301 of the Act.¹⁷

8. **IT IS FURTHER ORDERED** that, pursuant to Section 1.80 of the Commission's rules, within thirty (30) calendar days of the release date of this Notice of Apparent Liability for Forfeiture, Colorado River Adventures **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

9. Payment of the forfeiture must be made by check or similar instrument, wire transfer, or credit card, and must include the NAL/Account number and FRN referenced above. Colorado River Adventures shall also send electronic notification of payment to WR-Response@fcc.gov on the date said payment is made. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted.¹⁸ When completing the FCC Form 159, enter the Account Number in block number 23A (call sign/other ID) and enter the letters "FORF" in block number 24A (payment type code). Below are additional instructions you should follow based on the form of payment you select:

- Payment by check or money order must be made payable to the order of the Federal Communications Commission. Such payments (along with the completed Form 159) must be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-

¹⁵ *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087 (1997) (*Forfeiture Policy Statement*), recons. denied, 15 FCC Rcd 303 (1999); 47 C.F.R. § 1.80.

¹⁶ 47 U.S.C. § 503(b)(2)(E).

¹⁷ 47 U.S.C. §§ 503(b), 301; 47 C.F.R. §§ 0.111, 0.204, 0.311, 0.314, 1.80.

¹⁸ An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.

- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. To complete the wire transfer and ensure appropriate crediting of the wired funds, a completed Form 159 must be faxed to U.S. Bank at (314) 418-4232 on the same business day the wire transfer is initiated.
- Payment by credit card must be made by providing the required credit card information on FCC Form 159 and signing and dating the Form 159 to authorize the credit card payment. The completed Form 159 must then be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.

10. Any request for full payment under an installment plan should be sent to: Chief Financial Officer—Financial Operations, Federal Communications Commission, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554.¹⁹ If you have questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone, 1-877-480-3201, or by e-mail, ARINQUIRIES@fcc.gov.

11. The written statement seeking reduction or cancellation of the proposed forfeiture, if any, must include a detailed factual statement supported by appropriate documentation and affidavits pursuant to Sections 1.16 and 1.80(f)(3) of the Rules.²⁰ Mail the written statement to Federal Communications Commission, Enforcement Bureau, Western Region, San Diego Office, 4542 Ruffner Street, Suite 370, San Diego, California, 92111, and include the NAL/Acct. No. referenced in the caption. Colorado River Adventures also shall e-mail the written response to WR-Response@fcc.gov.

12. 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 (GAAP); 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.

13. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture shall be sent by both Certified Mail, Return Receipt Requested, and first class mail to Colorado River Adventures, P.O. Box 1088, Parker, Arizona, 85344.

FEDERAL COMMUNICATIONS COMMISSION

James T. Lyon
District Director
San Diego District Office
Western Region
Enforcement Bureau

¹⁹ See 47 C.F.R. § 1.1914.

²⁰ 47 C.F.R. §§ 1.16, 1.80(f)(3).