

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

In the Matter of)	File No.: EB-SED-12-00001715
)	
General Communications Inc.)	NAL/Acct. No.: 201332100010
)	
Former Licensee of Station WPSN343)	FRN: 0002709624

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: March 21, 2013

Released: March 21, 2013

By the Chief, Spectrum Enforcement Division, Enforcement Bureau:

I. INTRODUCTION

1. In this *Notice of Apparent Liability for Forfeiture*, we find General Communications Inc. (GCI),¹ former licensee of Commercial Mobile Radio Service (CMRS) station WPSN343, Madison, Wisconsin, apparently liable for a forfeiture in the amount of ten thousand dollars (\$10,000) for its apparent willful and repeated violation of Section 301 of the Communications Act of 1934, as amended (Act),² and Section 1.903(a) of the Commission's rules (Rules).³ The noted apparent violation involves GCI's operation of its CMRS station for approximately nine months without Commission authority.

II. BACKGROUND

2. On June 26, 2001, GCI was granted a license to operate station WPSN343 for ten years through June 26, 2011, the expiration date of the station's license. On April 29, 2011, GCI timely filed an application to renew the license for station WPSN343.⁴ The Commission's Wireless Telecommunications Bureau (Wireless Bureau) returned the renewal application by letter dated June 15, 2011,⁵ citing GCI's failure to file the notification of construction for station WPSN343 required by Section 1.946(d) of the Rules.⁶ In the WPSN343 Notice of Return, GCI was instructed to file within 60 days the notification of construction for station WPSN343, a request for waiver of the construction

¹ GCI is a family-owned communications equipment retailer and one of the country's largest Kenwood dealers, with locations in Madison and Milwaukee, Wisconsin. See <http://www.gencomm.com> (last visited Feb. 11, 2013).

² 47 U.S.C. § 301.

³ 47 C.F.R. § 1.903(a).

⁴ See File No. 0004709945, filed by General Communications Inc. (Apr. 29, 2011).

⁵ See Notice of Return, ULS Reference No. 5173395 (June 15, 2011) (WPSN343 Notice of Return). Section 1.946(d) of the Rules requires a licensee that has met its construction deadline in a timely manner to notify the Commission within 15 days of the expiration of the construction period that it has constructed the license. 47 C.F.R. § 1.946(d) (providing that "[a] licensee who commences service or operation within the construction period ... must notify the Commission by filing FCC Form 601 [and] [t]he notification must be filed within 15 days of the expiration of the applicable construction or coverage period").

⁶ See 47 C.F.R. § 1.946(d).

notification filing deadline, and an associated amendment to its renewal application.⁷ GCI did not file either the required construction notification or amendment, resulting in the dismissal of its renewal application on September 3, 2011.⁸

3. On September 6, 2011, GCI sought reconsideration of the dismissal of the license renewal applications for WPSN343 and requested reinstatement of the WPSN343 station license.⁹ On March 22, 2012, GCI filed a request for Special Temporary Authority (STA) to operate station WPSN343, which the Wireless Bureau granted the following day under the call sign WQPA930.¹⁰ Thereafter, on April 12, 2012, GCI submitted an application for a new station license to replace the cancelled WPSN343 license, which was granted under the call sign WQPJ597.¹¹ Because it appeared that GCI had operated station WPSN343 without Commission authorization after the expiration of the station license, the Wireless Bureau referred this matter to the Enforcement Bureau for investigation and possible enforcement action.

4. On December 14, 2012, the Enforcement Bureau's Spectrum Enforcement Division issued a letter of inquiry (LOI) to GCI, directing GCI to submit a sworn written response to a series of questions relating to GCI's operation of station WPSN343.¹² GCI responded to the LOI on January 3, 2013.¹³ In its LOI Response, GCI acknowledges that it failed to amend its WPSN343 license renewal application, as required by the WPSN343 Notice of Return,¹⁴ and that it continued to operate the station

⁷ See WPSN343 Notice of Return (stating that “[i]f a response has not been received within the 60 day time frame, the ULS system will automatically dismiss the application.”).

⁸ See Notice of Dismissal, ULS Reference No. 5213336 (Sept. 7, 2011); Wireless Telecommunications Bureau Site-By-Site Action, *Public Notice*, Report No. 7137 at 11 (Sept. 7, 2011). Because GCI did not submit the required information by the date specified, the WPSN343 station license automatically terminated as of its June 26, 2011 expiration date.

⁹ See Petition for Reconsideration, File Nos. 0004709945, filed by General Communications Inc. (Sept. 6, 2011) (Petition). In the Petition, GCI asserted that station WPSN343 was constructed within one month of the grant of the station license, and that GCI was not aware of the obligation to submit a notification of completion of construction. *See id.* GCI also contacted the Mobility Division in February 2012 to determine what should be done with respect to its expired license. *See* Letter from Cyndi Thomas, Assistant Chief, Mobility Division, FCC Wireless Telecommunications Bureau, to David Owen, General Communications Inc. (Feb. 14, 2013) (February 14, 2013 Letter) at 2. The Mobility Division directed GCI to refile a renewal application for station WPSN343, submit the required construction notification for the station, along with a request for waiver of the applicable filing deadline, and to submit an STA request if GCI wished to continue operating the station while its Petition was pending. *See id.* In addition, it contacted GCI in late March 2012, after GCI filed its STA request for WPSN343, to remind the licensee that it still needed to file a renewal application and construction notification for the station. *See id.* GCI subsequently informed Mobility Division staff that GCI intended to allow the STA to expire and that it would submit an application for a new license for its operations under WPSN343. *See id.* at 2-3.

¹⁰ See FCC File No. 0005130272, filed by General Communications Inc. (Mar. 22, 2012). The 60 day term of the STA expired on May 21, 2012. *See id.* The Wireless Bureau granted the STA without prejudice to any enforcement action related to the unauthorized operation of station WPSN343. *See id.*

¹¹ FCC File No. 0005161221, filed by General Communications Inc. (Apr. 12, 2012). On February 14, 2013, the Wireless Bureau dismissed GCI's Petition as moot because GCI elected to replace its expired license for WPSN343 with a new authorization for the same facilities in virtually the same locations as those previously authorized for station WPSN343. *See* February 14, 2013 Letter at 3-4.

¹² See Letter from John D. Poutasse, Chief, Spectrum Enforcement Division, FCC Enforcement Bureau, to Mr. Verne Vlack, President, General Communications Inc. (Dec. 14, 2012) (on file in EB-SED-12-00001715).

¹³ See Letter from Gregory Vlack, Vice-President, General Communications Inc., to Spectrum Enforcement Division, FCC Enforcement Bureau (Jan. 3, 2013) (on file in EB-SED-12-00001715) (LOI Response).

¹⁴ *Id.* at 1.

after June 26, 2011, the expiration date of the station license, until March 23, 2012, the date its STA was granted.¹⁵ GCI asserts that it believed its continued operation of the station was permissible because GCI's Petition remained pending.¹⁶

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 radio except under, and in accordance with, a Commission-granted authorization.¹⁷ As a Commission licensee, GCI was required to maintain its authorization in order to operate station WPSN343. Although GCI timely filed an application for renewal of the WPSN343 station license, GCI never submitted the required notification of construction for the station, or amended the WPSN343 renewal application, as required by the WPSN Notice of Return. Consequently, the WPSN343 renewal application was dismissed effective September 3, 2011, and the license automatically terminated as of its June 26, 2011 expiration date.¹⁸

6. We find no merit to GCI's argument that it was permitted to continue to operate station WPSN343 after the expiration of the station license due to the pendency of its Petition. Pursuant to Section 1.102(b)(1) and (b)(2) of the Rules, the Wireless Bureau *may*, in its discretion, stay the effect of an action taken pursuant to delegated authority pending the disposition of a petition for reconsideration, but is not required to do so.¹⁹ In this instance, such a stay was neither requested by GCI nor granted by the Wireless Bureau on its own motion. Accordingly, we find that by operating station WPSN343 without authority after the station license had expired, GCI apparently violated Section 301 of the Act and Section 1.903(a) of the Rules.²⁰

7. Section 503(b) of the Act²¹ and Section 1.80(a) of the Rules²² 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 Rules, and "repeated" means more than once or for more than one day.²³ Based on the record before us, it appears

¹⁵ *Id.* at 2.

¹⁶ *Id.*

¹⁷ 47 U.S.C. § 301; 47 C.F.R. § 1.903(a).

¹⁸ *See supra* note 8.

¹⁹ *See* 47 C.F.R. § 1.102(b)(1) ("Non-hearing or interlocutory actions taken pursuant to delegated authority shall, unless otherwise ordered by the designated authority, be effective upon release of the document containing the full text of such action, or in the event such a document is not released, upon release of a public notice announcing the action in question."). *See also id.* § 1.102(b)(2) ("If a petition for reconsideration of a non-hearing action is filed, the designated authority may in its discretion stay the effect of its action pending disposition of the petition for reconsideration.").

²⁰ GCI suggests in its LOI Response that Mobility Division staff encouraged GCI to file for a new station authorization to replace station WPSN343 rather than filing a second renewal application and a construction notification for the station (LOI Response at 2). That suggestion, however, is contradicted by the Mobility Division's finding in the February 14, 2013 Letter. *See supra* note 9.

²¹ 47 U.S.C. § 503(b).

²² 47 C.F.R. § 1.80(a).

²³ *See* 47 U.S.C. § 312(f)(1),(2). *See also Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387-4388, para. 5 (1991), *recon. denied*, 7 FCC Rcd 3454 (1992) (the definitions of willful and repeated contained in the Act apply to violations for which forfeitures are assessed under Section 503(b) of the Act).

that GCI's apparent violation of Section 301 of the Act and Section 1.903(a) of the Rules is both 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."²⁴ Section 1.80 of the Rules²⁵ sets a base forfeiture amount of \$10,000 for operation of a station without Commission authority. We note that in this instance GCI did not pursue the renewal of its station authorization with reasonable diligence, failing to submit the documentation required by the WPSN343 Return Notice. Accordingly, we propose a forfeiture in the amount of \$10,000 for GCI's continued operation of station WPSN343 after June 26, 2011, the expiration date of the station license, until March 23, 2012, the date its STA was granted.

IV. ORDERING CLAUSES

9. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended,²⁶ and Sections 0.111, 0.311, and 1.80 of the Commission's rules,²⁷ General Communications Inc. **IS** hereby **NOTIFIED** of its **APPARENT LIABILITY FOR A FORFEITURE** in the amount of ten thousand dollars (\$10,000) for the willful and repeated violation of Section 301 of the Communications Act of 1934, as amended, and Section 1.903(a) of the Commission's rules.

10. **IT IS FURTHER ORDERED** that, pursuant to Section 1.80 of the Commission's rules,²⁸ within thirty (30) calendar days after the release date of this *Notice of Apparent Liability for Forfeiture*, General Communications Inc. **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture consistent with paragraph 14 below.

11. 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. General Communications Inc. shall send electronic notification of payment to Neal McNeil at Neal.McNeil@fcc.gov, Karen Mercer at Karen.Mercer@fcc.gov, and Samantha Peoples at Sam.Peoples@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.²⁹ 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-

²⁴ 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; *Forfeiture Policy Statement*, Report and Order, 12 FCC Rcd 17087, 17110 (1997), *recon. denied*, 15 FCC Rcd 303 (1999) ("*Forfeiture Policy Statement*").

²⁵ 47 C.F.R. § 1.80.

²⁶ 47 U.S.C. § 503(b).

²⁷ 47 C.F.R. §§ 0.111, 0.311, 1.80.

²⁸ 47 C.F.R. § 1.80.

²⁹ 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.

12. Any request for full payment under the installment plan should be sent to: Chief Financial Officer—Financial Operations, Federal Communications Commission, 445 12th Street, S.W., Room 1-A625, Washington, DC 20554.³⁰ If you have questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone, 1-8777-480-3201, or by email, ARINQUIRIES@fcc.gov.

13. 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 Section 1.80(f)(3) and 1.16 of the Rules.³¹ The written statement must be mailed to the Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., Washington, DC 20554, ATTN: Enforcement Bureau – Spectrum Enforcement Division, and must include the NAL/Account Number referenced in the caption. The statement must also be emailed to Neal McNeil at Neal.McNeil@fcc.gov and Karen Mercer at Karen.Mercer@fcc.gov. 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.

³⁰ See 47 C.F.R. § 1.1914.

³¹ *Id.* §§ 1.80(f)(3), 1.16.

14. **IT IS FURTHERED ORDERED** that a copy of this *Notice of Apparent Liability for Forfeiture* shall be sent first class mail and certified mail return receipt requested to Verne Vlack, President, General Communications Inc., 2880 Commerce Park Drive, Madison, WI 53719.

FEDERAL COMMUNICATIONS COMMISSION

John D. Poutasse
Chief
Spectrum Enforcement Division
Enforcement Bureau