

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

In the Matter of)	
)	EB-FIELDWR-16-00020978
Ondas de Vida, Inc.,)	NAL/Acct. No: 201732900003
Licensee of FM Translator Station K256BS,)	FRN: 0014400279
Palmdale, California)	
)	Facility ID No. 138849

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: April 25, 2017

Released: April 27, 2017

By the Regional Director, Region Three, Enforcement Bureau:

I. INTRODUCTION

1. We propose a penalty of \$12,000 against Ondas de Vida, Inc. (OdV), the licensee of FM Translator Station K256BS, Palmdale, California (Fac. ID. No. 138849) (Station), for apparently operating the Station at power levels that exceeded the values specified in the Station's license and permitted under the Commission's rules (Rules). The Enforcement Bureau (Bureau) has repeatedly warned OdV, in writing and in person, that the Station's operations have varied, sometimes significantly, from its authorization. Despite these warnings, OdV repeatedly failed to adjust the Station's operating parameters to be consistent with those set forth in its license. OdV's apparent operation of its station at variance from its license and OdV's apparent deliberate disregard of the Bureau's warnings warrant a significant monetary penalty.

II. BACKGROUND

2. In response to a complaint lodged with the Commission, an agent from the Bureau's Los Angeles Field Office (Los Angeles Office) traveled to the Station's transmitter site on February 24, 2016, to determine whether the Station was operating within its licensed parameters of 0.010 kW (10 Watts) effective radiated power (ERP) and 0.005 kW (5 Watts) transmitter power output (TPO).¹ The tower owner granted the agent access to the Station's transmitter. Based on a visual inspection of the Station's transmission equipment, the agent observed that the Station employed the correct type of antenna and that it was using a Crown 250 transmitter, whose internal instrumentation indicated a TPO of 50 Watts. Based on the indicated TPO, the gain of the Station's antenna, and the line losses associated with length of the coaxial cable connecting the transmitter to the antenna, the agent calculated that the Station was operating with an ERP of 224 Watts.

3. The agent then contacted OdV and arranged to inspect the Station on March 9, 2016, in the presence of an OdV employee. When the agent arrived at the Station, he observed an OdV employee in the process of replacing the Crown 250 transmitter with a lower-powered Crown 30 transmitter. The

¹ See FCC File No. BLFT-20150707ABO. As the term suggests, TPO represents the power (in Watts) directly measured (either using an external wattmeter or the transmitter's own internal instrumentation). ERP is a value that represents the power radiated from an antenna and is calculated as the result of (a) antenna input power (*i.e.*, TPO less transmission line loss) and (b) the antenna's gain. Unless otherwise noted, calculations herein of ERP are based on 7 dBd of antenna gain (per the manufacturer's specifications) and line losses associated with 100 feet of 5/8-inch coaxial cable carrying RF signals at 99.1 MHz.

agent inquired about the reason for the equipment replacement, and the OdV employee explained that the Crown 250 transmitter could not be configured to operate at 10 Watts TPO. The agent then advised the OdV employee that the Station's license authorized 10 Watts ERP rather than 10 Watts TPO. The agent then attached a wattmeter to the Station's transmitter and measured a TPO of 8.25 Watts, which the agent calculated would produce an ERP of 37 Watts.

4. On April 11, 2016, the Los Angeles Office issued a Notice of Violation advising OdV that its operation of the Station violated Section 1.903(a) of the Rules (a) on February 24 and March 2, 2016, by operating with an ERP of 224 Watts instead of its authorized ERP of 10 Watts and (b) on March 9, 2016, by operating the Station with an ERP of 37 Watts.² On April 29, 2016, OdV submitted a response to the NOV in which it stated that it used the Crown 250 transmitter as a temporary solution while the Crown 30 transmitter was out for repairs.³ In the NOV Response, OdV further stated that "[w]e received the repaired transmitter in March and thanks to the help of the FCC inspector we are operating in full compliance with the FCC license."⁴

5. On May 10, 2016, the agent returned to the Station's transmitter site to determine whether the Station was indeed "operating in full compliance with the FCC license," as OdV represented.⁵ Upon inspecting the station, the agent determined that the Station's transmitter continued to operate at a TPO of 7.5 Watts, which, based on the agent's calculations, yielded an ERP of 33.7 Watts.

6. On February 21, 2017, the agent returned to the Station's transmitter site and observed that the internal instrumentation of the Station's transmitter indicated that it was operating with a TPO of 15 Watts. The next day, the agent returned to the Station's transmitter site and inspected the Station in the presence of an OdV employee. The agent used a wattmeter and determined that the Station's transmitter was operating with a TPO of 7.5 Watts, a level in excess of its authorized 5 Watts TPO.⁶

III. DISCUSSION

A. OdV Appears to Have Operated at Excessive Power Levels

7. We find that OdV apparently willfully and repeatedly violated Section 301 of the Communications Act of 1934, as amended (Act), as well as Sections 1.903(a) and 74.1235(e) of the Rules, by operating the Station with both a TPO and an ERP that exceeded the parameters set forth in the Station's license and in the Rules. Section 301 of the Act prohibits the use or operation of any apparatus for the transmission of energy or communications or signals by radio, except under, and in accordance with, the Act and with a license granted under the provisions of the Act.⁷ Section 1.903(a) of the Rules requires that stations in the Wireless Radio Services⁸ must be used and operated only in accordance with

² *Ondas de Vida, Inc.*, Notice of Violation, NOV No. V201632900005 (EB, Apr. 11, 2016) (NOV).

³ Letter from Hector Manzo, President, Ondas de Vida, Inc. (Apr. 29, 2016) (on file in EB-FIELDWR-16-00020978) (NOV Response).

⁴ *Id.*

⁵ *See id.*

⁶ During the February 21, 2017, inspection, the agent also observed that an element of the Station's antenna was damaged and recognized that the damaged element could result in a reduction in the antenna's gain, thereby reducing the Station's calculated ERP at a given TPO. Based on engineering assumptions most favorable to OdV, the agent estimated that the gain reduction was at most 1 dB and, based on that assumption, estimated that the measured TPO of 7.5 Watts would result in an ERP of 27 Watts. We rely on the evidence collected during the February 21, 2017, inspection only for our conclusion that OdV appears to have exceeded the applicable TPO limit.

⁷ 47 U.S.C. § 301.

⁸ The term "Wireless Radio Services" is defined as including all radio services authorized under Part 74 of the Rules, thus encompassing the Station, which is an FM translator authorized under Part 74, Subpart L of the Rules. 47 CFR § 1.907.

the rules applicable to their particular service and with a valid authorization granted by the Commission.⁹ Section 74.1235(e) of the Rules prohibits licensees of FM translator stations from operating with a TPO that exceeds 105 percent of the authorized TPO.¹⁰

8. As of at least February 24, 2016, if not before, OdV operated the Station at power levels that exceeded the power levels authorized in the Station's license, in apparent violation of Sections 1.903(a) and 74.1235(e) of the Rules. Despite OdV receiving verbal and written warnings from the Bureau, OdV continued to operate the Station at impermissible power levels. Specifically, after receiving OdV's response to the NOV, an agent from the Los Angeles Office returned to the Station's transmitter site on May 10, 2016, and observed that OdV continued to operate the Station at an ERP and a TPO greater than that indicated on the Station's license. The agent returned to the transmitter site a second time on February 22, 2017, and observed that OdV continued to operate the Station at a TPO greater than that indicated on the Station's license. Thus, OdV has operated the Station in apparent willful and repeated violation of Section 301 of the Act and Sections 1.903(a) (with respect to ERP) and 74.1235(e) (with respect to TPO) of the Rules.¹¹

B. Proposed Forfeiture

9. Section 503(b) of the Act authorizes the Commission to impose a forfeiture against any entity that "willfully or repeatedly fail[s] to comply with any of the provisions of [the Act] or of any rule, regulation, or order issued by the Commission."¹² Here, Section 503(b)(2)(D) of the Act authorizes the Commission to assess a forfeiture against OdV of up to \$19,246 for each violation or each day of a continuing violation, up to a statutory maximum of \$144,344 for a single act or failure to act.¹³ In exercising our forfeiture authority, we must consider 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."¹⁴ In addition, the Commission has established forfeiture guidelines; they establish base penalties for certain violations and identify criteria that we consider when determining the appropriate penalty in any given case.¹⁵ Under these guidelines, we may adjust a forfeiture upward for violations that are egregious, intentional, or repeated, or that cause substantial harm or generate substantial economic gain for the violator.¹⁶

10. Section 503(b)(6) of the Act empowers the Commission to assess forfeitures for violations that occurred within the year preceding the issuance of a Notice of Apparent Liability for Forfeiture.¹⁷ Section 1.80(b) of the Rules sets a base forfeiture of \$4,000 for exceeding power limits for each violation or each day of a continuing violation.¹⁸ We have discretion, however, to depart from these

⁹ 47 CFR § 1.903(a).

¹⁰ By its terms, Section 74.1235(e) would have permitted OdV to operate with a TPO of up to 5.25 Watts (*i.e.*, 105 percent of its authorized TPO), but, by operation of Section 1.903(a) of the Rules, OdV would have still been obliged to ensure that the resulting ERP did not exceed the 10 Watts authorized in the Station's license. 47 CFR §§ 1.903(a) and 74.1235(e).

¹¹ *See* paras. 5-6, *supra*.

¹² 47 U.S.C. § 503(b).

¹³ *See* 47 U.S.C. § 503(b)(2)(D); 47 CFR §§ 1.80(b)(7), (9); *see also Jay Peralta, Corona, New York, Notice of Apparent Liability for Forfeiture, FCC 17-35, n.30 (rel. Apr. 14, 2017) (discussing inflation adjustments to the forfeitures specified in Section 503(b)(2)(D))*.

¹⁴ 47 U.S.C. § 503(b)(2)(E).

¹⁵ 47 CFR § 1.80(b)(8), Note to paragraph (b)(8).

¹⁶ *Id.*

¹⁷ 47 U.S.C. § 503(b)(6).

¹⁸ 47 CFR § 1.80(b).

guidelines, taking into account the particular facts of each individual case.¹⁹ As described above, agents observed that, on two separate occasions following the issuance of the NOV (*i.e.*, on May 10, 2016, and February 22, 2017), OdV operated the Station in excess of one or both of the power limits specified on its license, in apparent violation of Section 301 of the Act and Sections 1.903(a) and 74.1235(e) of the Rules. Accordingly, we propose a total base forfeiture of \$8,000.

11. In addition, given the totality of the circumstances, and consistent with the *Forfeiture Policy Statement*, we conclude that an upward adjustment is warranted. Although the proposed base forfeiture addresses the two violations that the Bureau's agents observed during the past year, we note that the Bureau previously observed OdV operating its station in excess of its power limits, and issued a NOV to OdV for the same apparent violations.²⁰ Despite assuring the Bureau in the NOV Response that it would "operate in full compliance with its FCC license," OdV failed to so do.²¹ Accordingly, we believe that an aggregate upward adjustment of \$4,000 (\$2,000 for each violation) is warranted to address the repeated nature of OdV's apparent violations of Section 301 of the Act and Sections 1.903(a) and 74.1235(e) of the Rules. Therefore, after applying the *Forfeiture Policy Statement*, Section 1.80 of the Rules, and the statutory factors, we propose a total forfeiture of \$12,000, for which OdV is apparently liable.

IV. CONCLUSION

12. We have determined that OdV apparently willfully and repeatedly violated Section 301 of the Act and Sections 1.903(a) and 74.1235(e) of the Rules. As such, OdV is apparently liable for a forfeiture of \$12,000.

V. ORDERING CLAUSES

13. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Act²² and Sections 1.80 of the Rules,²³ Ondas de Vida, Inc., is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of Twelve Thousand Dollars (\$12,000) for willful and repeated violations of Section 301 of the Act²⁴ and Sections 1.903(a) and 74.1235(e) of the Rules.²⁵

14. **IT IS FURTHER ORDERED** that, pursuant to Section 1.80 of the Rules,²⁶ within thirty (30) calendar days of the release date of this Notice of Apparent Liability for Forfeiture, Ondas de Vida, 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 17 below.

15. 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. Ondas de Vida, Inc., shall send electronic notification of payment to Matthew L. Gibson at matthew.gibson@fcc.gov, with

¹⁹ *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, 17098–99, para. 22 (1997) (noting that "[a]lthough we have adopted the base forfeiture amounts as guidelines to provide a measure of predictability to the forfeiture process, we retain our discretion to depart from the guidelines and issue forfeitures on a case-by-case basis, under our general forfeiture authority contained in Section 503 of the Act") (*Forfeiture Policy Statement*), *recons. denied*, Memorandum Opinion and Order, 15 FCC Rcd 303 (1999).

²⁰ See NOV.

²¹ See NOV Response.

²² 47 U.S.C. § 503(b).

²³ 47 CFR § 1.80.

²⁴ 47 U.S.C. § 301.

²⁵ 47 CFR §§ 1.903(a), 74.1235(e).

²⁶ 47 CFR § 1.80.

copy 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.²⁷ 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 that should be followed based on the form of payment selected:

- 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 63197-9000, 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.

16. Any request for making full payment over time under an installment plan should be sent to: Chief Financial Officer—Financial Operations, Federal Communications Commission, 445 12th Street, SW, Room 1-A625, Washington, DC 20554.²⁸ Questions regarding payment procedures should be directed to the Financial Operations Group Help Desk by phone, 1-877-480-3201, or by e-mail, ARINQUIRIES@fcc.gov.

17. 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.²⁹ The written statement must be mailed to the Office of the Secretary, Federal Communications Commission, 445 12th Street, SW, Washington, DC 20554, ATTN: Enforcement Bureau – Office of the Field Director, and must include the NAL/Account Number referenced in the caption. The statement must also be e-mailed to Matthew L. Gibson at matthew.gibson@fcc.gov, with a copy to WR-Response@fcc.gov

18. 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.

²⁷ An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

²⁸ See 47 CFR § 1.1914.

²⁹ 47 CFR §§ 1.16, 1.80(f)(3).

19. **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 Hector Manzo, President, Ondas de Vida, Inc., P.O. Box 94, Victorville, California, 92393, and to Jeffrey D. Southmayd, Esq., Southmayd & Miller, 4 Ocean Ridge Boulevard South, Palm Coast, Florida, 32137.

FEDERAL COMMUNICATIONS COMMISSION

Lark Hadley
Regional Director, Region Three
Enforcement Bureau