

Federal Communications Commission

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

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| In the Matter of |) | |
| |) | |
| Wal-Mart Supercenter Store #3351 |) | EB-09-LA-0002 |
| |) | NAL/Acct. No.201032900001 |
| Las Vegas, Nevada |) | FRN: 0017830407 |
| |) | |

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: December 22, 2009

By the District Director, Los Angeles Office, Western Region, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture ("NAL"), we find that Wal-Mart Supercenter Store #3351("Wal-Mart"), in Las Vegas, Nevada, apparently willfully and repeatedly violated Section 301 of the Communications Act of 1934, as amended ("Act")¹ by operating radio transmitters without a license. We conclude, pursuant to Section 503(b) of the Communications Act of 1934, as amended ("Act"),² that Wal-Mart is apparently liable for a forfeiture in the amount of five thousand dollars (\$5,000).

II. BACKGROUND

2. On May 6, 2009, in response to a complaint about Wal-Mart operating radio transmitters on 151.955 MHz in Las Vegas, Nevada, without a license, an agent from the Enforcement Bureau's Los Angeles Office employed a Mobile Direction Finding ("MDF") vehicle to monitor 151.955 MHz in Las Vegas, Nevada. Voice transmissions were detected and determined to be emanating on 151.955 MHz from the Wal-Mart Supercenter Store #3351, located at 6464 N. Decatur Boulevard, Las Vegas, Nevada ("Decatur Boulevard Location").

3. On May 7, 2009, the Los Angeles agent again located and monitored voice transmissions on 151.955 from the Wal-Mart store at the Decatur Boulevard Location. The agent then conducted an inspection of the base station and radios in use at the Wal-Mart store. During the inspection, the store manager invited the agent to assist in reviewing the in-store license board but no radio license could be found authorizing operations on 151.955 MHz. The store manager was unable to provide the agent with a copy of an FCC license for Wal-Mart's radio operation on 151.955 MHz. The manager was unaware that Wal-Mart was required to have a license to operate on this frequency. The store manager was unable to provide the agent with a copy of an FCC license for Wal-Mart's radio operation on 151.955 MHz.

4. On October 16, 2009, the Los Angeles Office issued a Letter of Inquiry ("LOI") to Wal-

¹ 47 U.S.C. § 301.

² 47 U.S.C. § 503(b).

Mart. The LOI requested, in part, a copy of Wal-Mart's authorization to operate transmitters on 151.955 MHz³ at the Decatur Boulevard Location. On November, 1, 2009, the Los Angeles Office received Wal-Mart's response to the LOI. The response stated, in relevant part, that Wal-Mart did not have a license to operate on 151.955 MHz at the Decatur Boulevard Location, that Wal-Mart had been operating radios at this location on 151.955 MHz since October 2006, and that Wal-Mart was no longer using the frequency and moved to the multi-use radio service ("MURS") subsequent to the agent's inspection.

III. DISCUSSION

5. 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. The term "willful" as used in Section 503(b) has been interpreted to mean simply that the acts or omissions are committed knowingly.⁴ The term "repeated" means the commission or omission of such act more than once or for more than one day.⁵

6. 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... except under and in accordance with this Act and with a license in that behalf granted under the provisions of this Act."⁶ On May 6 and May 7, 2009, the Los Angeles agent located transmissions on 151.955 MHz to the Wal-Mart store at the Decatur Boulevard Location. At the time of the inspection, the store manager was unable to provide a Los Angeles agent with a license authorizing Wal-Mart's operation on 151.955 MHz. Subsequently, in its response to the Los Angeles Office's LOI, Wal-Mart acknowledged it did not have a license to operate on 151.955 MHz and that it had been operating on that frequency since October 2006. While Wal-Mart has a license to operate at another location in the Las Vegas area on other frequencies pursuant to Part 90 of the Rules, there is no evidence that its license authorized Wal-Mart to operate on 151.955 MHz from the Decatur Boulevard Location. The violation occurred on more than one day, therefore, it was repeated. As the holder of multiple FCC licenses, Wal-Mart was aware such operations required a license. Therefore, the violation was willful. Based on the evidence before us, we find that Wal-Mart apparently willfully and repeatedly violated Section 301 of the Act.

7. Pursuant to *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, ("*Forfeiture Policy Statement*"), and Section 1.80 of the Rules, the base forfeiture amount for operation without an instrument of authorization is \$10,000.⁷ 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

³ A search of the Commission's databases revealed that at the time of the investigation, a separate Wal-Mart store, Wal-Mart Supercenter Store #3473, located at 4505 W. Charleston Boulevard, in Las Vegas, Nevada, was licensed to operate on frequencies 151.925 MHz, 159.720 MHz, 159.750 MHz, 159.810 MHz and 173.325 MHz, pursuant to call sign WQJA394.

⁴ Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'willful', when used with reference to the commission or omission of any act, 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...." See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

⁵ 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."

⁶ 47 U.S.C. § 301.

⁷ 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999); 47 C.F.R. § 1.80.

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violations, and with respect to the violator, the degree of culpability, and history of prior offenses, ability to pay, and other such matters as justice may require.⁸ Applying the *Forfeiture Policy Statement*, Section 1.80, and the statutory factors to the instant case, we conclude that Wal-Mart's operation is not analogous to a "pirate" station operator, and, consequently, we downwardly adjust the proposed forfeiture amount to \$5,000.⁹ We conclude that Wal-Mart is apparently liable for a \$5,000 forfeiture.

IV. ORDERING CLAUSES

8. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.111, 0.311, 0.314 and 1.80 of the Commission's Rules, Wal-Mart Supercenter Store #3351, is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of five thousand dollars (\$5,000) for violations of Section 301 of the Act.¹⁰

9. **IT IS FURTHER ORDERED** that, pursuant to Section 1.80 of the Commission's Rules within thirty days of the release date of this Notice of Apparent Liability for Forfeiture, Wal-Mart Supercenter Store #3351, Inc. **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

10. 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/Account Number and FRN Number referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank TREAS/NYC, and account number 27000001. For payment by credit card, an FCC Form 159 (Remittance Advice) must be submitted. When completing the FCC Form 159, enter the NAL/Account number in block number 23A (call sign/other ID), and enter the letters "FORF" in block number 24A (payment type code). Requests for full payment under an installment plan should be sent to: Chief Financial Officer -- Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554.¹¹ Please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: ARINQUIRIES@fcc.gov with any questions regarding payment procedures. Wal-Mart Supercenter Store #3351 must send electronic notification on the date said payment is made to WR-Response@fcc.gov.

11. The response, if any, must be mailed to Federal Communications Commission, Enforcement Bureau, Western Region, Los Angeles Office, 18000 Studebaker Road, Suite 660, Cerritos, CA 90703 and must include the NAL/Acct. No. referenced in the caption. An electronic copy shall be sent 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

⁸ 47 U.S.C. § 503(b)(2)(E).

⁹ See *Gateway Security Systems, Inc.*, 18 FCC Rcd 24026 (EB 2003).

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

¹¹ See 47 C.F.R. § 1.1914.

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financial documentation submitted.

13. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture shall be sent by Certified Mail, Return Receipt Requested, and regular mail, to Wal-Mart Supercenter Store #3351, at its address of record.

FEDERAL COMMUNICATIONS COMMISSION

Nader Haghghat
District Director
Los Angeles District Office
Western Region
Enforcement Bureau