

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

In the Matter of)	
)	
Lubbock Aero)	File No.: EB-SED-13-00008250 ¹
Lubbock, Texas)	
)	NAL/Acct. No.: 201032100020
)	
)	FRN: 0018657619

MEMORANDUM OPINION AND ORDER

Adopted: March 31, 2014

Released: March 31, 2014

By the Senior Deputy Chief, Spectrum Enforcement Division, Enforcement Bureau:

1. We deny a Petition filed by Lubbock Aero seeking reconsideration of a ten thousand dollar (\$10,000) forfeiture issued by the Spectrum Enforcement Division of the Enforcement Bureau (Division). We take this action as part of our duty to prevent unlicensed radio operations from dangerously interfering with authorized radio communications in the United States. By engaging in unlicensed operation on a frequency reserved for aviation support stations, Lubbock Aero risked interfering with properly authorized aeronautical radio communications involving aviation and public safety.

2. On January 29, 2014, the Division released a *Forfeiture Order*, which imposed a \$10,000 forfeiture against Lubbock Aero for its willful and repeated violation of Section 301 of the Communications Act of 1934, as amended (Act), and Section 1.903(a) of the Commission's rules (Rules).² In its Petition, Lubbock Aero argues that the *Forfeiture Order* is inconsistent with the Supreme Court's 2012 *Fox*³ decision because the *Forfeiture Order* establishes a "bright line test" for aviation support stations—that a forfeiture of at least \$10,000 will be assessed for unauthorized operation on a frequency reserved for aviation support stations without regard to the facts and circumstances of the case—without providing advance notice of such change.⁴ This argument is without merit.

3. Lubbock Aero concedes that it operated on frequency 123.300 MHz without Commission authority in violation of Section 301 of the Act and Section 1.903(a) of the Rules.⁵ Section 503(b) of the Act and Section 1.80(a) of the Rules provide that any person who willfully or repeatedly fails to comply

¹ The investigation initiated under File No. EB-08-SE-721 was subsequently assigned File No. EB-SED-13-00008250. Any future correspondence with the FCC concerning this matter should reflect the new case number.

² See *Lubbock Aero*, Forfeiture Order, 29 FCC Rcd 59 (Enf. Bur. 2014) (*Forfeiture Order*). See also 47 U.S.C. § 301; 47 C.F.R. § 1.903(a). The *Forfeiture Order* includes a more complete recitation of the facts and history of this case and is incorporated herein by reference.

³ *FCC v. Fox Television Stations, Inc.*, 132 S. Ct. 2307 (2012) (*Fox*).

⁴ See Lubbock Aero Petition for Reconsideration at 3–6 (filed Feb. 28, 2014) (on file in EB-SED-13-00008250) (Petition). This argument rests on a single sentence in the *Forfeiture Order* which distinguished the facts of the instant case from those involving Private Land Mobile Radio Service stations. See *Forfeiture Order*, 29 FCC Rcd at 64, para. 11 ("Again, Lubbock Aero has relied on cases that are inapposite because they did not involve the unlicensed operation of a radio station using a frequency reserved for aviation support stations.").

⁵ See Petition at 2.

with the provisions of the Act or the Rules shall be liable for a forfeiture penalty.⁶ In light of the applicable statutory factors, the Rules, and the *Forfeiture Policy Statement*, the Division assessed the base forfeiture amount of \$10,000 for Lubbock Aero's unauthorized operation.⁷ The *Forfeiture Order* neither broke new ground nor established a bright line test, and we therefore deny Lubbock Aero's Petition.

4. Accordingly, **IT IS ORDERED** that, pursuant to Sections 4(i) and 405 of the Communications Act of 1934, as amended, and Sections 0.111, 0.311, and 1.106 of the Commission's rules,⁸ the Petition for Reconsideration filed by Lubbock Aero is hereby **DENIED** and the *Forfeiture Order* **IS AFFIRMED**.

5. **IT IS FURTHER ORDERED** that pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.111, 0.311 and 1.80 of the Commission's rules,⁹ Lubbock Aero **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of ten thousand dollars (\$10,000) for 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 This matter has been referred to the U.S. Department of Justice for enforcement of the forfeiture pursuant to Section 504(a) of the Communications Act of 1934, as amended.¹¹

6. **IT IS FURTHER ORDERED** that a copy of this Memorandum Opinion and Order shall be sent by first class mail and certified mail return receipt requested to Richard Casler, Vice President/General Manager, Lubbock Aero, 6304 North Cedar Avenue, Lubbock, TX 79403-6842, and to Dennis P. Corbett, Esq., Counsel for Lubbock Aero, Lerman Senter PLLC, 2000 K Street, NW, Suite 600, Washington, DC 20006-1809.

FEDERAL COMMUNICATIONS COMMISSION

Ricardo M. Durham
Senior Deputy Chief, Spectrum Enforcement Division
Enforcement Bureau

⁶ See 47 U.S.C. § 503(b); 47 C.F.R. § 1.80(a). In the case of unauthorized operation, Section 1.80(b) of the Rules sets a base forfeiture amount of \$10,000. See 47 C.F.R. § 1.80(b).

⁷ As the Division noted in the *Forfeiture Order*, the Act mandates that we “take into account 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” when assessing a forfeiture. *Forfeiture Order*, 29 FCC Rcd at 60–61, para. 5 (quoting 47 U.S.C. § 503(b)(2)(E)). See also *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, 17100–01, para. 27 (1997) (*Forfeiture Policy Statement*), recons. denied, Memorandum Opinion and Order, 15 FCC Rcd 303 (1999).

⁸ 47 U.S.C. §§ 154(i), 405; 47 C.F.R. §§ 0.111, 0.311, 1.106.

⁹ 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.111, 0.311, 1.80.

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

¹¹ 47 U.S.C. § 504(a).