

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

In the Matter of	)	
	)	
<b>Florida Power and Light Company</b>	)	
	)	
Notice of Apparent Liability for Forfeiture	)	
	)	File No. 920EF0026
Licensee of Private Land Mobile Radio Service	)	
Station KNDT378, Fort Pierce, FL	)	
Station WBN240, Port Saint Lucie, FL	)	
Station WBN47, Miami, FL	)	
Station WDN404, Indiantown, FL	)	
Station WFM912, Indiantown, FL	)	
Station WNLC610, Sarasota, FL	)	
Station WPAR819, Edgewater, Palatka, Sanford, FL	)	
Station WPAT225, Hollywood, Pompano Sunrise, Hialeah, FL	)	

**NOTICE OF APPARENT LIABILITY FOR FORFEITURE**

**Adopted: May 6, 1999**

**Released: May 7, 1999**

By the Chief, Enforcement and Consumer Information Division,  
Wireless Telecommunications Bureau:

**I. Introduction**

1. This is a Notice of Apparent Liability for Forfeiture, pursuant to Section 503(b) of the Communications Act of 1934, (the "Act") as amended,<sup>1</sup> and Section 1.80 of the Commission's Rules,<sup>2</sup> against Florida Power and Light Company ("FPL"), licensee of Private Land Mobile Radio Service stations: KNDT378 in Fort Pierce, Florida; WBN240 in Port Saint Lucie, Florida; WBN47 in Miami, Florida; WDN404 in Indiantown, Florida; WFM912 in Indiantown, Florida; WNLC610 in Sarasota, Florida; WPAR819 in Edgewater, Palatka, and Sanford, Florida; and WPAT225 in Hollywood, Pompano, Sunrise, and Hialeah, Florida. For the reasons that follow, we find that FPL operated these stations with expired licenses, in apparent violation of Section 301 of the Act,<sup>3</sup> and Section 90.113 of the Commission's Rules.<sup>4</sup> We conclude that FPL is apparently liable for a forfeiture in the amount of \$16,000.

<sup>1</sup> 47 U.S.C. § 503(b).

<sup>2</sup> 47 C.F.R. § 1.80.

<sup>3</sup> 47 U.S.C. § 301.

## II. Background

2. FPL's licenses for the above captioned Private Land Mobile Radio Service stations expired between February 25, 1997 and April 18, 1998. Specifically, the license for Station KNNDT378 in Fort Pierce, Florida, expired on October 2, 1997; WBN240 in Port Saint Lucie, Florida, expired on October 2, 1997; WBN47 in Miami, Florida, expired on October 2, 1997; WDN404 in Indiantown, Florida, expired on April 18, 1998; WFM912 in Indiantown, Florida, expired on February 25, 1997; WNLC610 in Sarasota, Florida, expired on March 7, 1998; WPAR819 in Edgewater, Palatka, and Sanford, Florida, expired on September 29, 1997; and WPAT225 in Hollywood, Pompano, Sunrise, and Hialeah, Florida expired on October 8, 1997. FPL did not file timely applications to renew any of these licenses.

3. On July 17, 1998, FPL was granted verbal Special Temporary Authority to operate the above captioned Private Land Mobile Radio Service stations by Mary Shultz, Chief, Licensing & Technical Analysis Branch, Wireless Telecommunications Bureau.<sup>5</sup> Pursuant to Section 90.145 of the Commission's Rules,<sup>6</sup> FPL then filed a written request for the Special Temporary Authority on July 23, 1998.<sup>7</sup> In its written request, FPL stated that the licenses for the above captioned Private Land Mobile stations "expired without renewal, some for a period of many months."<sup>8</sup> FPL further stated that "upon realizing" that the licenses had expired, it "immediately" requested a Special Temporary Authority to enable FPL to continue to operate the stations.<sup>9</sup>

## III. Discussion

4. Section 301 of the Act<sup>10</sup> provides in pertinent part, "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

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<sup>4</sup> 47 C.F.R. § 90.113. After FPL had requested Special Temporary Authority, this rule was replaced by Section 1.903 of the Commission's Rules. See *In the Matter of Biennial Regulatory Review - - Amendment of Parts 0, 1, 13, 22, 24, 26, 27, 80, 87, 90, 95, 97, and 101 of the Commission's Rules to Facilitate the Development and Use of the Universal Licensing System in the Wireless Telecommunications Services*, WT Docket No. 98-20, 13 FCC Rcd 21027 (1998) (The appendices were not included, but the text of the new rules can be found at 63 Fed. Reg. 68904, 68921 (December 14, 1998)). During the period prior to the time that FPL requested Special Temporary Authority, however, Section 90.113 of the Commission's Rules was the pertinent rule.

<sup>5</sup> See Letter from Everett C. Stonebraker, Manager of Programs & Radio Operations, Florida Power and Light Company, to Mary Shultz, Chief, Licensing & Technical Analysis Branch, Wireless Telecommunications Bureau dated July 23, 1998. ("Stonebraker Letter"). See also Letter from Carole C. Harris, Attorney at Law, McDermott, Will & Emery, to Mary Shultz, Chief, Licensing & Technical Analysis Branch, Wireless Telecommunications Bureau, dated July 17, 1998, and received on July 20, 1998.

<sup>6</sup> 47 C.F.R. § 90.145.

<sup>7</sup> See Stonebraker Letter at 1.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> 47 U.S.C. § 301.

provisions of this Act.” Similarly, Section 90.113 of the Commission’s Rules provides in pertinent part, “Station Authorization Required. No radio transmitter shall be operated . . . except under and in accordance with a proper authorization granted by the Commission.”<sup>11</sup> Section 503(b) of the Act and Section 1.80 of the Commission’s Rules further provide that a forfeiture penalty may be assessed against a person who is found to have willfully or repeatedly failed to comply with the Commission’s rules.<sup>12</sup> The Commission has held that an act or omission is “willful” if it is a conscious act or omission whether or not there is any intent to violate the rule.<sup>13</sup>

5. Based upon FPL’s submissions, we find that FPL willfully and repeatedly violated Section 301 of the Act<sup>14</sup> and Section 90.113 of the Commission’s Rules.<sup>15</sup> Once FPL’s licenses expired, it lacked the required authority to operate those stations. FPL’s apparent violations continued from the time the respective licenses expired until, at a minimum, the verbal Special Temporary Authority was granted. We note that FPL voluntarily brought this matter to the Bureau’s attention.

6. The guidelines contained in the Commission’s *Forfeiture Policy Statement*, which became effective on October 14, 1997, specify a base forfeiture amount of \$4,000 for using an unauthorized frequency.<sup>16</sup> The guidelines, however, permit the Commission to issue a higher or lower forfeiture than provided in the guidelines.<sup>17</sup> Section 503(b)(2)(D) of the Act requires the Commission to 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.”<sup>18</sup> In this case, taking into consideration all of the factors required by Section 503(b)(2)(D) of the Act,<sup>19</sup> including, but not limited to, the nature of the stations in question, the number of stations involved, the length of time during which the unlawful operation took place, FPL’s voluntary disclosure of its violations to the Commission, and its prompt taking of remedial action once it realized the licenses had expired, we believe it is appropriate to reduce the amount of the proposed forfeiture from \$4,000 per station to \$2,000 for each of the eight stations, for a total forfeiture of \$16,000.

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<sup>11</sup> 47 C.F.R. § 90.113 (emphasis in the original).

<sup>12</sup> 47 U.S.C. § 503(b); 47 C.F.R. § 1.80.

<sup>13</sup> *Southern California Broadcasting Company*, 6 FCC Rcd 4387 (1991) (the definition of willfulness contained in 47 U.S.C. § 312(f) applies equally to 47 U.S.C. § 503).

<sup>14</sup> 47 U.S.C. § 301.

<sup>15</sup> 47 C.F.R. § 90.113.

<sup>16</sup> *The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Commission’s Rules (Forfeiture Policy Statement)*, 12 FCC Rcd 17087, 17113 (1997).

<sup>17</sup> *Forfeiture Policy Statement, supra*, 12 FCC Rcd at 17112.

<sup>18</sup> 47 U.S.C. § 503(b)(2)(D).

<sup>19</sup> *Id.*

#### IV. Conclusion and Ordering Clause

7. Based on the foregoing, we find that FPL continued to operate multiple Part 90 stations after the expiration of its authorizations, in apparent violation of Section 301 of the Act<sup>20</sup> and Section 90.113 of the Commission's Rules.<sup>21</sup> FPL operated some of the stations without a valid authorization for approximately one year. We conclude that a forfeiture in the amount of \$16,000 is appropriate.

8. ACCORDINGLY, pursuant to Section 503(b) of the Communications Act of 1934, as amended,<sup>22</sup> and Section 1.80 of the Commission's Rules,<sup>23</sup> Florida Power and Light Company is hereby NOTIFIED of this APPARENT LIABILITY FOR FORFEITURE in the amount of sixteen thousand dollars (\$16,000) for willfully and repeatedly violating Section 301 of the Communications Act of 1934, as amended,<sup>24</sup> and Section 90.113 of the Commission's Rules.<sup>25</sup>

9. IT IS FURTHER ORDERED, pursuant to Section 1.80 of the Commission's Rules, 47 C.F.R. § 1.80, that within thirty days of the release of this Notice, Florida Power and Light Company SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.<sup>26</sup>

10. IT IS FURTHER ORDERED that copies of this Notice shall be sent, by Certified Mail/Return Receipt Requested, to Florida Power and Light Company, P.O. Box 029100, Miami, FL 33102, and to counsel for Florida Power and Light Company, Ms. Carole C. Harris, Esq., McDermott, Will & Emery, 600 13<sup>th</sup> Street, N.W., Washington, D.C. 20005-3096.

#### FEDERAL COMMUNICATIONS COMMISSION

Catherine W. Seidel  
Chief, Enforcement and Consumer Information Division  
Wireless Telecommunications Bureau

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<sup>20</sup> 47 U.S.C. § 301.

<sup>21</sup> 47 C.F.R. § 90.113.

<sup>22</sup> 47 U.S.C. § 503(b).

<sup>23</sup> 47 C.F.R. § 1.80.

<sup>24</sup> 47 U.S.C. § 301.

<sup>25</sup> 47 C.F.R. § 101.5.

<sup>26</sup> Payment of the forfeiture may be made by credit card through the Commission's Billings and Collections Branch at (202) 418-1995 or by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note the file number in the caption of this proceeding.