

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

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

**FORFEITURE ORDER**

**Adopted: January 29, 2014**

**Released: January 29, 2014**

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

**I. INTRODUCTION**

1. We issue a monetary forfeiture of ten thousand dollars (\$10,000) to Lubbock Aero for willfully and repeatedly violating Section 301 of the Communications Act of 1934, as amended (Act),<sup>2</sup> and Section 1.903(a) of the Commission’s rules (Rules).<sup>3</sup> The violations involve Lubbock Aero’s operation of a radio station on frequency 123.300 MHz in Lubbock, Texas, without Commission authority.<sup>4</sup> Lubbock Aero does not deny that it operated the station without a license, but argues that the proposed forfeiture of \$10,000 should be cancelled.<sup>5</sup> We decline to do so.

**II. BACKGROUND**

2. Lubbock Aero provides various services (including charter services, aircraft maintenance, and sales) to private and civil aviation aircraft and operators at the Lubbock Preston Smith International Airport in Lubbock, Texas.<sup>6</sup> On March 31, 2009, the Enforcement Bureau’s Spectrum Enforcement Division (Division) issued the first of two letters of inquiry to Lubbock Aero in response to a complaint alleging that Lubbock Aero was operating on frequency 123.300 MHz without Commission authority, and that it could be the source of interference to aviation support stations authorized to transmit on that frequency.<sup>7</sup> The Commission’s records showed not only that Lubbock Aero lacked current authority to operate on frequency 123.300 MHz, but also that it had never had such authority for operation on that

<sup>1</sup> 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.

<sup>2</sup> 47 U.S.C. § 301.

<sup>3</sup> 47 C.F.R. § 1.903(a).

<sup>4</sup> See *Lubbock Aero*, Notice of Apparent Liability for Forfeiture, 25 FCC Rcd 2525 (Enf. Bur. 2010) (*NAL*).

<sup>5</sup> See *Lubbock Aero*, Response to Notice of Apparent Liability for Forfeiture (Apr. 26, 2010) (on file in EB-SED-13-00008250) (*NAL Response*).

<sup>6</sup> See generally *Lubbock Aero Home Page*, <http://Lubbockaero.com> (last visited Nov. 25, 2013).

<sup>7</sup> See Letter from Kathryn S. Berthot, Chief, Spectrum Enforcement Division, FCC Enforcement Bureau, to Richard Casler, Manager, Lubbock Aero (Mar. 31, 2009) (on file in EB-SED-13-00008250); see also Letter from Kathryn S. Berthot, Chief, Spectrum Enforcement Division, FCC Enforcement Bureau, to Richard Casler, Vice President/General Manager, Lubbock Aero (Oct. 15, 2009) (on file in EB-SED-13-00008250).

frequency.<sup>8</sup> In its response to the first letter of inquiry, Lubbock Aero admitted that it operated radio communications over frequency 123.300 MHz “on numerous dates” since January 1, 2008, as part of its business and aircraft support operations, and that this frequency was associated with Lubbock Aero in its advertisements and publications.<sup>9</sup> Lubbock Aero claimed, however, that it had stopped doing so after receiving the March 31, 2009 letter of inquiry.<sup>10</sup> Lubbock Aero did not deny that it had no FCC license to operate a radio station on frequency 123.300 MHz.

3. Based on the record evidence, the Division on March 25, 2010, issued a *Notice of Apparent Liability for Forfeiture* to Lubbock Aero for its apparent willful and repeated violations of Section 301 of the Act and Section 1.903(a) of the Rules.<sup>11</sup> The Division found that Lubbock Aero was apparently engaged in unlicensed operation between January 1, 2008, and March 31, 2009.<sup>12</sup> The Division proposed a \$10,000 forfeiture—the base forfeiture amount provided under Section 1.80(b) of the Rules for operation of a station without Commission authority—for the violation.<sup>13</sup>

4. On April 26, 2010, Lubbock Aero filed a response to the *NAL* and requested cancellation of the proposed \$10,000 forfeiture.<sup>14</sup> Although Lubbock Aero does not deny that it engaged in unlicensed operation, it contends that cancellation is justified because it may not have operated a radio station over the frequency at all during the seven days captured by the statute of limitations, or that any operation constituted only “*de minimis* activity” during those days.<sup>15</sup> Lubbock Aero asserts that the only period available for potential forfeiture action is from March 26, 2009, one year prior to issuance of the *NAL*, to April 1, 2009, “the date of Lubbock Aero’s last broadcast on the frequency.”<sup>16</sup> Lubbock Aero further argues that the Division inappropriately considered violations for which the statute of limitations had run under Section 503(b)(6)(B) of the Act because they occurred more than one year from the date the *NAL* was issued.<sup>17</sup> Finally, Lubbock Aero argues that the proposed forfeiture is disproportionate to forfeitures or other penalties previously assessed against other entities.<sup>18</sup>

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<sup>8</sup> See *NAL*, 25 FCC Rcd at 2525, para. 2.

<sup>9</sup> This frequency appeared in several publications while Lubbock Aero actively provided flight training; it also was reflected in various advertisements about Lubbock Aero’s services. See Letter from Richard Casler, Vice President/General Manager, Lubbock Aero, to Kathryn S. Berthot, Chief, Spectrum Enforcement Division, FCC Enforcement Bureau (Apr. 8, 2009) (on file in EB-SED-13-00008250).

<sup>10</sup> See *NAL*, 25 FCC Rcd at 2525–26, paras. 3–4.

<sup>11</sup> See *supra* note 4. See also 47 U.S.C. § 301; 47 C.F.R. § 1.903(a).

<sup>12</sup> See *NAL*, 25 FCC Rcd at 2527, para. 6.

<sup>13</sup> See *id.* at 2528–29, paras. 8–11. See also 47 C.F.R. § 1.80(b).

<sup>14</sup> See *NAL* Response.

<sup>15</sup> See *id.* at 4–8.

<sup>16</sup> See *id.* at 3–4.

<sup>17</sup> See *id.* at 2–6 (citing 47 U.S.C. § 503(b)(6)(B)).

<sup>18</sup> See *id.* at 3, 6–8.

### III. DISCUSSION

5. The Division proposed the forfeiture in accordance with Section 503(b) of the Act,<sup>19</sup> Section 1.80 of the Rules,<sup>20</sup> and the Commission's *Forfeiture Policy Statement*.<sup>21</sup> Section 503(b)(2)(E) of the Act requires the Commission to "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."<sup>22</sup> As discussed below, we have considered Lubbock Aero's response to the *NAL* in light of the applicable statutory factors, the Rules, and the *Forfeiture Policy Statement*, and we find that cancellation or reduction of the \$10,000 forfeiture is unwarranted.

#### A. The Proposed Forfeiture is Authorized Under the Act and the Rules

6. We affirm the *NAL*'s finding that Lubbock Aero willfully<sup>23</sup> and repeatedly<sup>24</sup> violated Section 301 of the Act and Section 1.903(a) of the Rules. 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 authorization.<sup>25</sup> In addition, Section 87.18(a) of the Rules states that stations in the aviation services, with the exception of certain aircraft stations, must be licensed.<sup>26</sup> Under Section 87.323(b) of the Rules, frequency 123.300 MHz is "available for assignment to aviation support stations used for pilot training, coordination of lighter-than-air aircraft operations, or coordination of soaring or free ballooning activities."<sup>27</sup>

7. In the *NAL*, the Division found that Lubbock Aero had engaged in unauthorized operation on frequency 123.300 until March 31, 2009, and the *NAL* explicitly stated that the proposed forfeiture "relates to Lubbock Aero's violations that occurred within the last year."<sup>28</sup> In its *NAL*

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<sup>19</sup> 47 U.S.C. § 503(b).

<sup>20</sup> 47 C.F.R. § 1.80.

<sup>21</sup> *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, 17113 (1997) (*Forfeiture Policy Statement*), *recons. denied*, Memorandum Opinion and Order, 15 FCC Rcd 303 (1999).

<sup>22</sup> 47 U.S.C. § 503(b)(2)(E).

<sup>23</sup> Section 312(f)(1) of the Act defines "willful" as "the conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate" the law. *Id.* § 312(f)(1). The legislative history of Section 312 clarifies that this definition of willful applies to Sections 312 and 503 of the Act, H.R. Rep. No. 97-765 (1982) (Conf. Rep.), and the Commission has so interpreted the term in the Section 503(b) context, *see So. Cal. Broad. Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4387-88, para. 5 (1991) (*So. Cal.*), *recons. denied*, 7 FCC Rcd 3454 (1992).

<sup>24</sup> Section 312(f)(2) of the Act, which also applies to forfeitures assessed pursuant to Section 503(b) of the Act, defines "repeated" as "the commission or omission of [any] act more than once or, if such commission or omission is continuous, for more than one day." 47 U.S.C. § 312(f)(2); *see also So. Cal.*, 6 FCC Rcd at 4388, para. 5.

<sup>25</sup> 47 U.S.C. § 301; 47 C.F.R. § 1.903(a).

<sup>26</sup> 47 C.F.R. § 87.18(a).

<sup>27</sup> 47 C.F.R. § 87.323(b).

<sup>28</sup> *See NAL*, 25 FCC Rcd at 2527, paras. 6, 9. Before responding to the *NAL*, Lubbock Aero had not provided the specific date when it last operated the radio station, but stated only that its "use of this frequency halted immediately upon receipt of your letter dated March 31, 2009." Letter from Richard Casler, Vice President/General Manager, Lubbock Aero, to Spectrum Enforcement Division, Federal Communications Commission (Oct. 29, 2009) (on file in EB-SED-13-00008250). In its *NAL* Response, Lubbock Aero confirms that it last operated over the frequency 123.300 MHz on April 1, 2009. *See NAL* Response at 2-4.

Response, Lubbock Aero argues that cancellation of the forfeiture is appropriate because the unauthorized operation during the seven-day period subject to the Commission's forfeiture authority was "infrequent," typically lasting no more than 30 seconds, and without (to its knowledge) complaint of any interference.<sup>29</sup> We decline to cancel the forfeiture on this basis. As the Commission has previously indicated, unauthorized operation is a serious violation.<sup>30</sup> Under Section 301 of the Act and Section 1.903(a) of the Rules, Lubbock Aero must obtain Commission authorization to operate a radio station (including for aviation support) irrespective of how often, or for what purpose, the station is operated.<sup>31</sup> There is no exception to this threshold requirement for aviation or public safety related communications.<sup>32</sup> Significantly, Lubbock Aero's unauthorized operations, even if infrequent, could potentially interfere with properly authorized aeronautical radio communications involving aviation and public safety. Furthermore, Lubbock Aero's claim that it was unaware of any interference caused by its unauthorized operation on frequency 123.300 MHz, and that this should serve as a mitigating circumstance, is unavailing.<sup>33</sup> It is well-established that the absence of harm in unauthorized operation cases is not a mitigating factor warranting cancellation—or even a downward adjustment—of a forfeiture.<sup>34</sup>

8. Lubbock Aero also argues that because of the possibility that it may not have engaged in radio communications over the unauthorized frequency during the seven-day period, no forfeiture should be imposed.<sup>35</sup> We find this argument wholly unpersuasive. First, this argument contradicts statements elsewhere in Lubbock Aero's NAL Response that acknowledge unauthorized operation during the seven-day period. In this regard, Lubbock Aero states that April 1, 2009 is "the date of Lubbock Aero's *last broadcast* on the Frequency."<sup>36</sup> In addition, the sworn declaration provided by Richard Casler, who is Vice President and General Manager of Lubbock Aero, states: "On *and* prior to April 1, 2009, Lubbock Aero occasionally received calls on the Frequency from inbound and outbound aircraft, as part of Lubbock Aero's support for these aircraft and their passengers and crew."<sup>37</sup> Second, the possibility that Lubbock Aero may not have engaged in any radio communication for seven days straight is highly unlikely, given the very nature of its business: work that caters to inbound and outbound aircraft and requires a radio station to be fully operational and ready to receive and initiate any calls with pilots in the

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<sup>29</sup> See NAL Response at 4.

<sup>30</sup> See, e.g., *Data Investments, Inc.*, Notice of Apparent Liability for Forfeiture, 6 FCC Rcd 4496, 4497, para. 8 (1991), *recons. denied*, 8 FCC Rcd 8704 (1993). See also *Union Oil Co. of Cal., a subsidiary of Chevron Corp.*, Notice of Apparent Liability for Forfeiture, 27 FCC Rcd 13806, 13809–10, para. 9 (2012) (proposing base forfeiture amounts of \$10,000 each for operation of stations without Commission authority and \$3,000 each for failure to timely file applications).

<sup>31</sup> See 47 U.S.C. § 301; 47 C.F.R. § 1.903(a); see also 47 C.F.R. § 87.18(a).

<sup>32</sup> See *id.*

<sup>33</sup> See NAL Response at 7 n.7.

<sup>34</sup> See *New York Radio Serv.*, Forfeiture Order, 19 FCC Rcd 10704, 10706, para. 8 (Enf. Bur. 2004) ("To take enforcement action on the basis of unauthorized operation, we need not establish that the unauthorized operation caused harmful interference."). See also *Liberty Cable Co.*, Memorandum Opinion and Order, 16 FCC Rcd 16105, 16113, para. 25 (2001) (lack of interference does not warrant downward adjustment); *Pac. W. Broadcasters, Inc.*, Memorandum Opinion and Order, 50 FCC 2d 819, 819–20, para. 4 (1975) (same); *AGM-Nevada, LLC*, Forfeiture Order, 18 FCC Rcd 1476, 1478–79, para. 8 (Enf. Bur. 2003) (same); *Bureau D'Electronique Appliquee, Inc.*, Forfeiture Order, 20 FCC Rcd 17893, 17898, para. 16 (Enf. Bur. 2005) (same).

<sup>35</sup> See NAL Response at 4.

<sup>36</sup> *Id.* (emphasis added).

<sup>37</sup> *Id.* at Casler Decl. (emphasis added).

area. Lubbock Aero did not close its operations during the seven-day period, and it stated that it typically engaged in radio communications with pilots three or four times a day.<sup>38</sup> Third, Lubbock Aero provides no evidence at all to support its supposition that it did not operate on 123.300 MHz during the seven-day period. Indeed, it concedes that it maintained no records to confirm the dates and number of transmissions it received or made during the entire period of the investigation, which includes the seven-day period.<sup>39</sup> We conclude that the preponderance of the evidence demonstrates that Lubbock Aero operated its radio station without authority during the seven-day period, and we find that the violations warrant the imposition of a \$10,000 forfeiture.<sup>40</sup>

9. Lubbock Aero further argues that the \$10,000 forfeiture was based, in part, on violations that occurred outside the statute of limitations.<sup>41</sup> This argument is without merit. As discussed above, the forfeiture was assessed for violations that occurred “within the past year.”<sup>42</sup> Moreover, as Lubbock Aero acknowledges, the Commission has long held that earlier events may be used to “shed light on the true character of matters occurring within the limitations period,”<sup>43</sup> and that the detailing of such events “plac[e] the violations in context, thus establishing clearly the licensee’s degree of culpability and the continuing nature of the violations.”<sup>44</sup> Section 503(b)(2)(E) of the Act anchors this time-honored principle; it expressly requires the Commission to consider, among other factors, the “circumstances,” “extent,” “degree of culpability,” and “any history of prior offenses,” when determining a forfeiture amount.<sup>45</sup> Here, the forfeiture is no more than the base amount for the violations that occurred during the seven-day period and does not include (although it could have) any upward adjustment of the base amount for violations that occurred before March 26, 2009.<sup>46</sup>

#### **B. The Amount of the Proposed Forfeiture Is Justified**

10. Next, Lubbock Aero contends that imposing a \$10,000 forfeiture for its unauthorized operation is not consistent with previous assessments that proposed a lower forfeiture for violations that (in its view) persisted longer and potentially caused more harmful interference.<sup>47</sup> In support of its contention, Lubbock Aero cites four Notices of Apparent Liability for Forfeiture (NALs) that the Bureau

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<sup>38</sup> *Id.* at 4 (“On a typical day, Lubbock Aero would answer pilot calls three or four times.”). Lubbock Aero never stated that its business was closed during the seven-day period, and its business advertised frequency 123.300 MHz to the aviation community in the area as the frequency to use when communicating with Lubbock Aero. Further, after it ceased operating over frequency 123.300, Lubbock Aero immediately sought special temporary authority (which it received on April 7, 2009) to continue its radio operations, but on frequency 129.100 MHz—presumably to ensure that it could continue to communicate with inbound and outbound aircraft.

<sup>39</sup> *See id.* at 3–4.

<sup>40</sup> Upon further reflection, we believe that the proposed forfeiture of \$10,000 may have been unduly low, given the public safety concerns and the duration of the violations. If this case were before us for the first time, we would consider imposing a higher forfeiture.

<sup>41</sup> *See* NAL Response at 2–6.

<sup>42</sup> NAL, 25 FCC Rcd at 2528, para. 9.

<sup>43</sup> *Eastern Broad. Corp.*, 10 FCC 2d 37, 38, para. 3 (1967) (quoting *Local Lodge 1424 v. NLRB*, 362 U.S. 411, 416 (1960)).

<sup>44</sup> *Cate Comm’ns Corp.*, Memorandum Opinion and Order, 60 Rad. Reg. 2d 1386 (1986).

<sup>45</sup> 47 U.S.C. § 503(b)(2)(E).

<sup>46</sup> *See* NAL, 25 FCC Rcd at 2527–28, paras. 6–9.

<sup>47</sup> *See* NAL Response at 6–7.

previously issued against entities operating without Commission authority, in violation of Section 301 of the Act and Section 1.903(a) of the Rules.<sup>48</sup> However, none of the four cases Lubbock Aero cites supports cancellation or reduction of the forfeiture. Each case concerned Private Land Mobile Radio Service licensees operating with an *expired* license, which is not the situation here. In this case, Lubbock Aero never had a license to operate a radio station over a frequency reserved for aviation support stations, and its unlicensed operation posed significant public safety risks, given the potential for harmful interference to aircraft. Furthermore, even if the facts and circumstances of the four cases were properly analogous, those cases are all older precedent decided under a different forfeiture approach, which the Bureau has since modified. Consistent with Bureau precedent when the four cited NALs were issued, the Bureau reduced the \$10,000 base forfeiture for unauthorized operation in those cases to \$5,000 or \$6,000 based on its previous view that a former licensee who operates a station with an expired license is less culpable than a “pirate” operator who lacks prior authority to operate.<sup>49</sup> However, when facing unauthorized operation by an individual or entity that had not been issued a license, as is the case here, the Commission has found the \$10,000 base forfeiture to be appropriate.<sup>50</sup> Thus, even under the previous forfeiture approach, Lubbock Aero would be subject to a \$10,000 forfeiture for operating a radio station without a license.

11. Finally, Lubbock Aero argues that the Bureau’s decision in *Wilks License Company – Lubbock LLC* to issue a Notice of Violation (NOV) for spurious emissions to a broadcast licensee rather than an NAL justifies imposing the same result here.<sup>51</sup> We disagree. 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. In the NOVs issued in *Wilks License Company –*

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<sup>48</sup> See *id.* (citing *Mathews Readymix LLC*, Notice of Apparent Liability for Forfeiture, 23 FCC Rcd 12828 (Enf. Bur. 2008) (*Mathews ReadyMix*) (forfeiture paid); *Imperial Sugar Co.*, Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 4987 (Enf. Bur. 2007) (*Imperial Sugar*) (forfeiture paid); *Kimberly Clark Corp.*, Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 9094 (Enf. Bur. 2007) (*Kimberly Clark*) (forfeiture paid); *Five Star Parking d/b/a Five Star Taxi Dispatch*, Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 18857 (Enf. Bur. 2007) (*Five Star Parking*) (forfeiture paid)).

<sup>49</sup> See *Mathews ReadyMix*, 23 FCC Rcd at 12830–31, para. 10; *Imperial Sugar*, 22 FCC Rcd at 4989–90, para. 10; *Kimberly Clark*, 22 FCC Rcd at 9096–97, para. 11; *Five Star Parking*, 22 FCC Rcd at 18860, para. 11.

<sup>50</sup> See, e.g., *Domtar Indus., Inc.*, Notice of Apparent Liability for Forfeiture, 21 FCC Rcd 13811, 13815–16, paras. 12–14 (Enf. Bur. 2006) (proposing the base forfeiture amount of \$10,000 for operating without Commission authorization and an upward adjustment of \$4,000 for unauthorized operations that spanned over a five-year period) (forfeiture paid); *Able Infosat Commc’ns, Inc.*, Notice of Apparent Liability for Forfeiture, 23 FCC Rcd 887, 889–90, para. 10 (Enf. Bur. 2008) (proposing the base forfeiture amount of \$10,000 for operating without Commission authorization) (forfeiture paid). Furthermore, as we have recently emphasized, reduced forfeitures imposed on licensees for unauthorized operations in past cases have not created sufficient incentives for licensees to monitor their license expiration dates and adopt appropriate procedures to ensure substantial compliance. Accordingly, the Bureau has determined that unauthorized operation by a former license-holder is a serious violation that justifies imposing the current base forfeiture of \$10,000 before applying the adjustment criteria under Section 503(b)(2)(E) of the Act. See, e.g., *Emigrant Storage LLC*, Notice of Apparent Liability for Forfeiture, 27 FCC Rcd 8917, 8919–21, paras. 8–9 & n.26 (Enf. Bur. 2012) (applying the recommended base forfeitures, as set forth in Section 1.80(b) of the Rules, 47 C.F.R. § 1.80(b), of \$10,000 for the unauthorized operation of a station and \$3,000 for the failure to file required forms or information when a licensee operated its station without authorization and failed to file a timely renewal application for its station, and finding no basis for downward adjustment of these base forfeitures); *Call Mobile, Inc.*, 26 FCC Rcd 74, 76–77, paras. 9–11 (Enf. Bur. 2011) (same); *BASF Corp.*, 25 FCC Rcd 17300, 17302–03, paras. 9–10 (Enf. Bur. 2010) (same).

<sup>51</sup> See NAL Response at 7 (citing *Wilks License Co. – Lubbock LLC, Licensee of Radio Stations KONE and KMMX*, Notice of Violation, NOV No. V201032500003 (Enf. Bur. 2010) (*Wilks I*); *Wilks License Co. – Lubbock LLC, Licensee of Radio Station KLLL*, Notice of Violation, NOV No. V201032500002 (Enf. Bur. 2010) (*Wilks II*)).

*Lubbock LLC*, an agent from the Bureau's Dallas Office conducted an on-site inspection of three stations licensed to Wilks License Company. During the inspection, the agent detected spurious emissions emanating from the radio stations that the licensee's engineer immediately corrected while the agent was present.<sup>52</sup> Consistent with Bureau practice with respect to on-site investigations, the agent issued an NOV to provide the licensee official notice of the violation, to obtain information about the circumstances of the violation, and to request a statement about the steps the licensee planned to take to ensure that the violations did not recur.<sup>53</sup> After consideration of Wilks License Company's response, the Dallas Office determined that the nature and circumstances of the case did not merit issuing an NAL.<sup>54</sup> Here, our decision to issue an NAL is justified given the particular facts and circumstances of this case, and Lubbock Aero has not presented any arguments to convince us otherwise.

12. Having considered Lubbock Aero's response to the *NAL* in light of the applicable statutory factors, the Rules, and the *Forfeiture Policy Statement*, we conclude that Lubbock Aero willfully and repeatedly violated Section 301 of the Act and Section 1.903(a) of the Rules<sup>55</sup> by operating a radio station on frequency 123.300 MHz without Commission authority, and that neither cancellation nor reduction of the proposed \$10,000 forfeiture is warranted.

#### IV. ORDERING CLAUSES

13. Accordingly, **IT IS 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,<sup>56</sup> 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.<sup>57</sup>

14. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within ten (10) calendar days after the release date of this Forfeiture Order.<sup>58</sup> If the forfeiture is not paid within the period specified, the case may be referred to the U.S. Department of Justice for enforcement of the forfeiture pursuant to Section 504(a) of the Act.<sup>59</sup> Lubbock Aero shall send electronic notification of payment to Ricardo Durham at Ricardo.Durham@fcc.gov, Kathy Harvey at

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<sup>52</sup> See *Wilks I*, *supra* note 51; *Wilks II*, *supra* note 51.

<sup>53</sup> See 47 C.F.R. § 1.89. The fact that an NOV is issued does not preclude the Commission from taking further action by issuing an NAL. See *id.* (noting that an NOV "may be combined with [an NAL].") In any case, an NOV may only be issued to "any person who holds a license, permit or other authorization," and as such is wholly irrelevant here. *Id.*

<sup>54</sup> The decision not to proceed with an NAL in *Wilks License Company – Lubbock LLC* is properly within the scope of the Commission's broad forfeiture authority. See *Forfeiture Policy Statement*, 12 FCC Rcd at 17092–93, para. 8; 17101–02, paras. 29, 31. Indeed, the Commission has broad discretion to determine the appropriate forfeiture amount depending on the circumstances of each case, and is not bound by the forfeiture amounts imposed in different cases. See *id.* See also *Cont'l Broad. Inc. v. FCC*, 439 F.2d 580, 583 (D.C. Cir. 1971) (noting that "the choice of remedies and sanctions is a matter wherein the Commission has broad discretion") (internal citation omitted), *cert. denied*, 403 U.S. 905 (1971)).

<sup>55</sup> 47 U.S.C. § 301; 47 C.F.R. § 1.903(a).

<sup>56</sup> 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.111, 0.311, 1.80.

<sup>57</sup> 47 U.S.C. § 301; 47 C.F.R. 1.903(a).

<sup>58</sup> 47 C.F.R. § 1.80.

<sup>59</sup> 47 U.S.C. § 504(a).

Kathy.Harvey@fcc.gov, and to Samantha Peoples at Sam.Peoples@fcc.gov, on the date said payment is made.

15. The payment must be made by check or similar instrument, wire transfer, or credit card, and must include the NAL/Account Number and FRN referenced above. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted.<sup>60</sup> 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 Lubbock Aero should follow based on the form of payment it selects:

- 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, S.W., Room 1-A625, Washington, D.C. 20554.<sup>61</sup> If Lubbock Aero has questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone, 1-877-480-3201, or by e-mail, ARINQUIRIES@fcc.gov.

17. **IT IS FURTHER ORDERED** that a copy of this Forfeiture 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  
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<sup>60</sup> An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

<sup>61</sup> See 47 C.F.R. § 1.1914.