

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

In the Matter of	)	
	)	
Woodland Communications Corporation	)	File Number EB-02-DV-313
	)	
Licensee of Station WMF732	)	NAL/Acct. No. 200332800012
Montrose, Colorado	)	FRN 0002-3220-89
Facility ID # 73626	)	
	)	
	)	

**NOTICE OF APPARENT LIABILITY FOR FORFEITURE**

Released: April 30, 2003

By the Acting District Director, Denver Office, Enforcement Bureau:

**I. INTRODUCTION**

1. In this Notice of Apparent Liability for Forfeiture ("NAL"), we find that Woodland Communications Corporation ("Woodland"), licensee of studio-transmitter-link (STL), call sign WMF732, in Montrose, Colorado, apparently willfully and repeatedly violated Sections 74.551(a)(2), 74.551(a)(3) and 74.561 of the Commission's Rules ("Rules"),<sup>1</sup> by failing to operate the STL transmitter on the authorized frequency and failing to operate from the authorized location. We conclude, pursuant to Section 503(b) of the Communications Act of 1934, as amended,<sup>2</sup> that Woodland is apparently liable for a forfeiture in the amount of eight thousand dollars (\$8,000).

**II. BACKGROUND**

2. On August 1, 2002, a Denver Office agent inspected broadcast stations KUBC(AM) and KKXK(FM), licensed to Montrose, Colorado. During the inspection, the agent found and advised station personnel that the STL transmitter utilized by KUBC-AM, call sign WMF732, was operating on an unauthorized frequency and from an unauthorized location. Using a spectrum analyzer, the agent verified that the STL transmitter was operating on the frequency of 948.873 MHz. Woodland's license for WMF732 specified the authorized frequency for the STL transmitter as 951.000 MHz with the authorized location for the transmitter at 2018 South Townsend, in Montrose, Colorado. At the time of the inspection, the studio and the STL transmitter were located at 106 Rose Lane in Montrose, Colorado.

3. A follow-up record search in September 2002, of the FCC database revealed that Woodland had failed to modify either the frequency or the transmitter location for WMF732, as the licensed frequency was shown as 951.000 MHz with a transmitter address of 2018 South Townsend, Montrose, Colorado.

4. A Notice of Violation ("NOV") was issued to Woodland on November 21, 2002, for violations of,

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<sup>1</sup> 47 C.F.R §§ 74.551(a)(2), 74.551(a)(3) and 74.561.

<sup>2</sup> 47 U.S.C. § 503(b).

among others, Sections 74.551(a)(2) and 74.551(a)(3) of the Rules, for failing to modify the authorization to indicate the change in operating frequency and transmitter location for WMF732. On December 10, 2002, Woodland requested an extension of time to respond to the NOV. On December 13, 2002, the Denver Office granted Woodland until December 20, 2002, to respond.

5. In Woodland's December 20, 2002, response to the NOV, Woodland stated with regard to the violation of 74.551(a)(2), that "...for as long as we have owned the radio stations – since 1988 – we have never modified the equipment for WMF732. This is to say we have operated the unit as it was sold to us some 14 years ago, with the license that the prior owner obtained for it. Indeed, it was not until we asked the FCC inspector, who had a spectrum analyzer with him during the inspection, to check the assigned frequency of the unit, did it become apparent to any of us that there was a variance between the frequency used and the frequency authorized." With regard to the violation of 74.551(a)(3), Woodland responded that when the application for change in the main studio location was filed, they "overlooked, however, the resulting application that would be required to change transmitter location for WMF732."

### III. DISCUSSION

6. Section 503(b) of the Act provides that any person who willfully fails to comply substantially with the terms and conditions of any license, or willfully 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.<sup>3</sup> The term "willful" as used in Section 503(b) has been interpreted to mean simply that the acts or omissions are committed knowingly and the term "repeated" means the commission or omission of the act more than once or for more than one day.<sup>4</sup>

7. Section 74.551(a)(2) of the Rules states that, "[p]rior Commission approval ... is required for ... [a] change in the operating frequency or channel bandwidth." Woodland's license for station WMF732 specified operation on 951.000 MHz. At the time of the inspection, Woodland was operating STL WMF732 on 948.873 MHz. Section 74.561 of the Rules requires that the licensee shall maintain the operating frequency of the transmitter within 0.005% of the assigned frequency. At the time of the inspection, WMF732 was transmitting on 948.873 MHz which is more than 0.22% from the assigned frequency. Woodland asserts that it was not aware that the STL was not operating on its authorized and assigned frequency until the time of the inspection. Woodland admitted in the response to the NOV that it had not monitored the STL frequency to determine if the STL was operating on a frequency other than that for which it was licensed. Woodland stated that the equipment for WMF732 had never been modified, as Woodland did not doubt the "match of the equipment to the license." The lack of routine maintenance and performance measurements indicates that during Woodland's fourteen years of ownership, no effort had been made so as to ascertain compliance with these particular Rule sections.

8. During the August 1, 2002, inspection, Woodland was advised that the STL was operating on an unauthorized frequency. Woodland did not promptly change the operating frequency of WMF732 to that authorized, nor did Woodland promptly file an application to change the operating frequency pursuant to section 74.551(a)(2) of the Rules. Commission records indicate that Woodland submitted an application to change the STL frequency on Form 601 on December 19, 2002, over 4 months after the inspection and nearly one month after the NOV was issued.

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<sup>3</sup> 47 U.S.C. § 503(b).

<sup>4</sup> 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...." See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991). Section 312(f)(2) of the Act, 47 U.S.C. § 312(f)(2), which also applies to Section 503(b), provides: "[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."

9. Section 74.551(a)(3) of the Rules states that, "[p]rior Commission approval ... is required for ... [a] change in the location of the transmitter or transmitting antenna except when relocation of the transmitter is within the same building." At the time of the inspection, the STL was not authorized to operate from the location at which it was installed. Woodland acknowledged in response to the NOV that it failed to modify the authorization to indicate the new location for the STL transmitter when the studio and associated STL were moved in January 1998. Moreover, even though Woodland was advised during the August 1, 2002, inspection that the STL was operating at an unauthorized location, Woodland did not promptly file an application to change the transmitter location pursuant to section 74.551(a)(3) of the Rules. Rather, Woodland waited 4 months after the inspection and nearly one month after the NOV before submitting an application on Form 601 to the Commission on December 19, 2002, to change the station's location of operation.

10. Operation on the frequency and at the location licensed is a fundamental requirement of the FCC's licensing policy and is critical to spectrum coordination and non-interference. As a licensee, Woodland is aware of its obligations to operate in accordance with the terms and conditions of its authorizations. We do not find Woodland's suggestion that, at the time of the inspection, they requested verification of the STL's frequency mitigating. Verification of operation by licensees on their authorized frequencies is a normal component of a station inspection. And, licensees are expected to comply with the Rules .

11. Based on the evidence before us, we find that Woodland willfully and repeatedly violated Sections 74.551(a)(2), 74.551(a)(3) and 74.561 of the Commission's Rules by failing to operate the STL transmitter on the authorized frequency and failing to operate the STL at the authorized location.<sup>5</sup>

12. The base forfeiture amount set by *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, ("*Forfeiture Policy Statement*"),<sup>6</sup> and Section 1.80 of the Commission's Rules,<sup>7</sup> for operating on an unauthorized frequency is \$4,000 and for operating at an unauthorized location is \$4,000. In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(D) of the Act,<sup>8</sup> which include the nature, circumstances, extent, and gravity of the violation(s), 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. Applying the *Forfeiture Policy Statement* and the statutory factors to the instant case, an \$8,000 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, Woodland Communications Corporation is hereby NOTIFIED of an APPARENT LIABILITY FOR A FORFEITURE in the amount of eight thousand dollars (\$8,000) for violations of Sections 74.551(a)(2), 74.551(a)(3) and 74.561 of the Rules.<sup>9</sup>

14. IT IS FURTHER ORDERED THAT, pursuant to Section 1.80 of the Commission's Rules<sup>10</sup> within thirty days of the release date of this NOTICE OF APPARENT LIABILITY, Woodland Communications Corporation SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

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<sup>5</sup> 47 C.F.R. §§ 74.551(a)(2), 74.551(a)(3) and 74.561.

<sup>6</sup> 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999).

<sup>7</sup> 47 C.F.R. § 1.80.

<sup>8</sup> 47 U.S.C. § 503(b)(2)(D).

<sup>9</sup> 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.111, 0.311, 1.80, 74.551(a)(2), 74.551(a)(3) and 74.561.

<sup>10</sup> 47 C.F.R. § 1.80.

15. Payment of the forfeiture may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment MUST INCLUDE the FCC Registration Number (FRN) and the NAL/Acct. No. referenced in the caption.

16. The response, if any, must be mailed to Federal Communications Commission, Enforcement Bureau, Technical and Public Safety Division, 445 12<sup>th</sup> Street, S.W., Washington, D.C. 20554, and must include the NAL/Acct. No. referenced in the caption.

17. 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 financial documentation submitted.

18. Requests for payment of the full amount of this Notice of Apparent Liability under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.<sup>11</sup>

19. Under the Small Business Paperwork Relief Act of 2002, Pub L. No. 107-198, 116 Stat. 729 (June 28, 2002), the FCC is engaged in a two-year tracking process regarding the size of entities involved in forfeitures. If you qualify as a small entity and if you wish to be treated as a small entity for tracking purposes, please so certify to us within thirty (30) days of this NAL, either in your response to the NAL or in a separate filing to be sent to the Technical and Public Safety Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street S.W., Washington, D.C. 20554. Your certification should indicate whether you, including your parent entity and its subsidiaries, meet one of the definitions set forth in the list provided by the FCC's Office of Communications Business Opportunities (OCBO) set forth in Attachment A of this Notice of Apparent Liability. This information will be used for tracking purposes only. Your response or failure to respond to this question will have no effect on your rights and responsibilities pursuant to Section 503(b) of the Communications Act. If you have any questions regarding any of the information contained in Attachment A, please contact OCBO at (202) 418-0990.

20. IT IS FURTHER ORDERED THAT a copy of this NOTICE OF APPARENT LIABILITY shall be sent by Certified Mail # 7001 0320 0002 9702 3682, Return Receipt Requested and First Class Mail, to Woodland Communications Corporation, P.O. Box 970, Montrose, CO 81401.

FEDERAL COMMUNICATIONS COMMISSION

Nikki P. Shears  
Acting District Director, Denver Office

Encl.: Attachment A

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<sup>11</sup> See 47 C.F.R. § 1.1914.