

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

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|-------------------------|---|----------------------------|
| In the Matter of        | ) |                            |
|                         | ) |                            |
| Califormula, Inc.       | ) | File No. EB-00-SD-248      |
| Chula Vista, California | ) | NAL Acct. No. 200132940001 |

**MEMORANDUM OPINION AND ORDER**

**Adopted: August 6, 2001**

**Released: August 8, 2001**

By the Chief, Enforcement Bureau:

1. In this Memorandum Opinion and Order (“Order”), we grant in part Califormula Inc.’s (“Califormula”) petition for reconsideration of a Forfeiture Order that we released on February 12, 2001<sup>1</sup> and dismiss as moot Califormula’s motion for stay of that Forfeiture Order. In the Forfeiture Order, we assessed a \$10,000 forfeiture against Califormula for violating Section 301 of the Communications Act of 1934 (“Act”), as amended.<sup>2</sup> In July of 2000, Califormula operated an unlicensed private microwave radio station from Chula Vista, California. As we explain below, we reduce Califormula’s \$10,000 forfeiture to \$6,000.

2. Califormula does not contest our finding that it operated an unlicensed private microwave radio station. Instead, it asks us to eliminate or reduce the forfeiture because it claims that its agents did not diligently pursue its modification application, its violation is minor, it attempted in good faith to comply with the Act and the Commission’s Rules, and it has a history of overall compliance before the Commission.

3. Califormula claims that its agents did not timely file its modification application or keep it informed of the Commission’s processing of the same. Califormula indicates that it assumed that the Commission granted its modification application. The Commission has long held that licensees are responsible for their agents’ acts and omissions.<sup>3</sup> Although Califormula delegated the filing of its modification application to its agents, it may not shirk its responsibility for their acts and omissions.

4. Califormula contends that its violation was minor. We disagree. However, we recognize that Califormula’s operation at the wrong location was not as egregious as that of a pirate operator (i.e., one who operates without any license at all). However, we are concerned that Califormula’s violation occurred over a period of several months and resulted in interference.

<sup>1</sup> *Califormula, Inc.*, DA 01-342 (Enf. Bur., rel. Feb. 12, 2001).

<sup>2</sup> 47 U.S.C. § 301.

<sup>3</sup> See *Liability of Sundial Broadcasting Corp.*, 30 FCC 2d 949 (1971); *NetCom Technologies, Inc.*, DA 01-1175 (Enf. Bur., rel. May 9, 2001).

Califormula has not contested either of these facts. Consequently, we believe a \$2,000 reduction is appropriate.

5. Califormula next requests a reduction based on good faith efforts to comply with the rules. Califormula presents no evidence of any good faith attempt to comply with the rules and does not challenge our conclusion that it was not qualified for conditional authorization under Section 101.31(b)(1) of the Commission's Rules.<sup>4</sup> Accordingly, we find that no further reduction in the forfeiture amount is warranted.

6. Califormula also asks us to consider its history of overall compliance before the Commission in mitigation of its violation. Our review of Commission records confirms that Califormula has a history of overall compliance with the Act and the Commission's Rules.<sup>5</sup> Consequently, in this case, we will reduce the forfeiture by another \$2,000.

7. Accordingly, **IT IS ORDERED THAT**, pursuant to Section 405 of the Act<sup>6</sup> and Section 1.106 of the Commission's Rules,<sup>7</sup> Califormula's petition for reconsideration **IS GRANTED** to the extent indicated herein and **IS DENIED** in all other aspects.

8. **IT IS FURTHER ORDERED THAT** Califormula's motion for stay of the Forfeiture Order is dismissed as moot.<sup>8</sup>

9. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules,<sup>9</sup> within 30 days of the release of this Forfeiture Order. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.<sup>10</sup> Payment may be made by mailing a check or similar instrument, payable to the order of the "Federal Communications Commission," to

Federal Communications Commission  
P.O. Box 73482  
Chicago, Illinois 60673-7482.  
RE: NAL Acct. No. 200132940001

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<sup>4</sup> See *Califormula, Inc.* at ¶¶ 4-6.

<sup>5</sup> Our review also included a search for records related to Noventa FM 90, Inc., the name Califormula previously used. See *id.* at ¶ 3.

<sup>6</sup> 47 U.S.C. § 405.

<sup>7</sup> 47 C.F.R. § 1.106.

<sup>8</sup> This relief was, in any event, unnecessary because we do not refer forfeiture orders for collection while a petition for reconsideration is pending.

<sup>9</sup> 47 C.F.R. § 1.80.

<sup>10</sup> 47 U.S.C. § 504(a).

The payment should note NAL Acct. No. 200132940001 referenced above. Requests for full payment under an installment plan should be sent to: Chief, Credit and Debt Management Center, 445 12th Street, S.W., Washington, D.C. 20554.<sup>11</sup>

10. **IT IS FURTHER ORDERED** that a copy of this Order shall be sent by Certified Mail Return Receipt Requested to David M. Silverman, Esq., counsel for Califormula, at Cole, Raywid & Braverman, L.L.P., 1919 Pennsylvania Avenue, N.W., Suite 200, Washington, D.C. 20006.

**FEDERAL COMMUNICATIONS COMMISSION**

David H. Solomon  
Chief, Enforcement Bureau

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<sup>11</sup> See 47 C.F.R. § 1.1914.