

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
	)	File No. EB-03-SD-007
Global Radio, Inc.	)	NAL/Acct. No. 200332940003
Licensee of Station WN3XFL	)	FRN: 000-869-2170
San Diego, California	)	
	)	

**NOTICE OF APPARENT LIABILITY FOR FORFEITURE**

Released: March 28, 2003

By the Enforcement Bureau: San Diego Office

**I. INTRODUCTION**

1. In this Notice of Apparent Liability for Forfeiture (“NAL”), we find that Global Radio, Inc. (“Global”), the licensee of Experimental Broadcast station WN3XFL, apparently willfully violated Sections 301 of the Communications Act of 1934,<sup>1</sup> as amended (“Act”) and Section 74.103(c) of the Commission’s Rules (“Rules”),<sup>2</sup> by operating radio transmitting equipment on unauthorized frequencies of 88.98, 104.1 and 106.9 MHz. We conclude, pursuant to Section 503(b) of the Act, that Global is apparently liable for forfeiture in the amount of twelve thousand dollars (\$12,000).

**II. BACKGROUND**

2. On January 23, 2003, the FCC’s Media Bureau granted Global an experimental FM license to operate on frequencies 93.7 and 96.9 MHz under call sign WN3XFL for a limited time from Qualcomm Stadium in San Diego, California. The FCC Media Bureau specifically denied Global’s request for authority to operate on four other channels, 89.1, 92.9, 104.1 and 106.9 MHz, because of possible interference to existing broadcast stations in Mexico and United States. In a subsequent search of FCC records no other operating authority was issued by the Media Bureau to Global, either in writing or verbally, to operate on any additional FM broadcast radio channels.

3. On January 26, 2003, during the Super Bowl XXXVII event at Qualcomm Stadium in San Diego, California, an agent from the Federal Communications Commission’s (“FCC”) San Diego

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<sup>1</sup> 47 U.S.C. § 301.

<sup>2</sup> 47 C.F.R. § 74.103(c).

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office noted that FM special broadcast event station WN3XFL was active on its two assigned frequencies of 93.7 and 96.9 MHz. However, the agent observed that WN3XFL was also operating on 88.98, 104.1 and 106.9 MHz. Using direction finding techniques the agent determined that the signals were coming from Qualcomm Stadium.

### III. DISCUSSION

4. 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.<sup>4</sup>

5. Section 301 of the Act sets forth generally that no person shall use or operate any apparatus for the transmission of energy or communications or signals by radio within the United States except under and in accordance with the Act and with a license granted under the provisions of the Act.

6. Section 74.103(c) of the Rules states that licensees in the Experimental Broadcast radio services may be assigned to operate on regularly assignable broadcast channels and those requests are reviewed by the FCC for possible impact upon regularly licensed stations. In this case the FCC determined that only two of the broadcast channel requested would be authorized and issued an authorization letter accordingly.

7. Based on the evidence before us, we find that Global operated radio transmitting equipment on unauthorized frequencies of 88.98, 104.1 and 106.9 MHz on January 26, 2003 in willful violation of Section 301 of the Act and Section 74.103 of the Rules. Pursuant to *The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*,<sup>5</sup> the base forfeiture amount for an unauthorized use of a frequency 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, which include the nature, circumstances, extent, and gravity of the violation(s), and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.<sup>6</sup> Because three unauthorized frequencies were in use at the same time, we are applying the base forfeiture specified in Section 1.80(b)(4) of the Rules for each of the three unauthorized frequency uses. Applying the statutory factors to the instant case, we find a total forfeiture in the amount of \$12,000 is warranted.

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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 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).

<sup>5</sup> *The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999).

<sup>6</sup> 47 U.S.C. § 503(b)(2)(D).

**IV. ORDERING CLAUSES**

8. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Act, and Sections 0.111, 0.311 and 1.80 of the Commission's Rules, Global Radio, Inc., is hereby NOTIFIED of their APPARENT LIABILITY FOR A FORFEITURE in the amount of twelve thousand dollars (\$12,000) for violating Section 301 of the Act and Section 74.103 Commission's Rules.<sup>7</sup>

9. IT IS FURTHER ORDERED THAT, pursuant to Section 1.80 of the Rules, within thirty days of the release date of this NOTICE OF APPARENT LIABILITY, Global Radio, Inc., SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

10. 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 should note the NAL/Account number and FRN referenced in the caption.

11. 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, DC 20554 and must include the NAL/Acct. number referenced in the caption.

12. 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; 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.

13. Requests for payment of the full amount of this Notice of Apparent Liability under an installment plan should be sent to: Chief, Revenue and Receivable Operation Group, 445 12<sup>th</sup> Street, S.W., Washington, D.C. 20554.<sup>8</sup>

14. 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 Federal Communications Commission, Enforcement Bureau, Technical & Public Safety Division. 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

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<sup>7</sup> 47 U.S.C. § 301; 47 C.F.R. §§ 0.111, 0.311, 1.80, and 74.103.

<sup>8</sup> See 47 C.F.R. § 1.1914.

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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 Act. If you have questions regarding any of the information contained in Attachment A, please contact OCBO at (202) 418-0990.

15. IT IS FURTHER ORDERED THAT this NOTICE OF APPARENT LIABILITY shall be sent, by certified mail, return receipt requested, to Global Radio, Inc., 1275 First Avenue No. 125, New York, New York, 10021.

FEDERAL COMMUNICATIONS COMMISSION

William R. Zears Jr.  
District Director - San Diego Office

Enc: Attachment A

## FCC List of Small Entities

As described below, a “small entity” may be a small organization, a small governmental jurisdiction, or a small business.

<b>(1) Small Organization</b>	
Any not-for-profit enterprise that is independently owned and operated and is not dominant in its field.	
<b>(2) Small Governmental Jurisdiction</b>	
Governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.	
<b>(3) Small Business</b>	
Any business concern that is independently owned and operated and is not dominant in its field, <i>and</i> meets the pertinent size criterion described below.	
Industry Type	Description of Small Business Size Standards
<i>Cable Services or Systems</i>	
Cable Systems	Special Size Standard – Small Cable Company has 400,000 Subscribers Nationwide or Fewer
Cable and Other Program Distribution	\$12.5 Million in Annual Receipts or Less
Open Video Systems	
<i>Common Carrier Services and Related Entities</i>	
Wireline Carriers and Service providers	1,500 Employees or Fewer
Local Exchange Carriers, Competitive Access Providers, Interexchange Carriers, Operator Service Providers, Payphone Providers, and Resellers	
<p><b>Note:</b> With the exception of Cable Systems, all size standards are expressed in either millions of dollars or number of employees and are generally the average annual receipts or the average employment of a firm. Directions for calculating average annual receipts and average employment of a firm can be found in 13 C.F.R. §121.104 and 13 C.F.R. § 121.106, respectively.</p>	
<i>International Services</i>	
International Broadcast Stations	
International Public Fixed Radio (Public and Control Stations)	

Fixed Satellite Transmit/Receive Earth Stations	\$12.5 Million in Annual Receipts or Less
Fixed Satellite Very Small Aperture Terminal Systems	
Mobile Satellite Earth Stations	
Radio Determination Satellite Earth Stations	
Geostationary Space Stations	
Non-Geostationary Space Stations	
Direct Broadcast Satellites	
Home Satellite Dish Service	
<b>Mass Media Services</b>	
Television Services	\$12 Million in Annual Receipts or Less
Low Power Television Services and Television Translator Stations	
TV Auxiliary, Special Broadcast and Other Program Distribution Services	
Radio Services	\$6 Million in Annual Receipts or Less
Radio Auxiliary, Special Broadcast and Other Program Distribution Services	
Multipoint Distribution Service	
<b>Wireless and Commercial Mobile Services</b>	
Cellular Licensees	1,500 Employees or Fewer
220 MHz Radio Service – Phase I Licensees	
220 MHz Radio Service – Phase II Licensees	Auction special size standard - <b>Small Business</b> is average gross revenues of \$15M or less for the preceding three years (includes affiliates and controlling principals) <b>Very Small Business</b> is average gross revenues of \$3M or less for the preceding three years (includes affiliates and controlling principals)
700 MHz Guard Band Licensees	
Private and Common Carrier Paging	
Broadband Personal Communications Services (Blocks A, B, D, and E)	1,500 Employees or Fewer
Broadband Personal Communications Services (Block C)	Auction special size standard - <b>Small Business</b> is \$40M or less in annual gross revenues for three previous calendar years <b>Very Small Business</b> is average gross revenues of \$15M or less for the preceding three calendar years (includes affiliates and persons or entities that hold interest in such entity and their affiliates)
Broadband Personal Communications Services (Block F)	
Narrowband Personal Communications Services	
Rural Radiotelephone Service	1,500 Employees or Fewer
Air-Ground Radiotelephone Service	
800 MHz Specialized Mobile Radio	Auction special size standard - <b>Small Business</b> is \$15M or less average annual gross revenues for three preceding calendar years
900 MHz Specialized Mobile Radio	
Private Land Mobile Radio	1,500 Employees or Fewer
Amateur Radio Service	N/A
Aviation and Marine Radio Service	1,500 Employees or Fewer
Fixed Microwave Services	
Public Safety Radio Services	<b>Small Business</b> is 1,500 employees or less <b>Small Government Entities</b> has population of less than 50,000 persons
Wireless Telephony and Paging and Messaging	

	1,500 Employees or Fewer
Personal Radio Services	N/A
Offshore Radiotelephone Service	1,500 Employees or Fewer
Wireless Communications Services	<b>Small Business</b> is \$40M or less average annual gross revenues for three preceding years
39 GHz Service	<b>Very Small Business</b> is average gross revenues of \$15M or less for the preceding three years
Multipoint Distribution Service	Auction special size standard (1996) – <b>Small Business</b> is \$40M or less average annual gross revenues for three preceding calendar years Prior to Auction – <b>Small Business</b> has annual revenue of \$12.5M or less
Multichannel Multipoint Distribution Service	
Instructional Television Fixed Service	\$12.5 Million in Annual Receipts or Less
Local Multipoint Distribution Service	Auction special size standard (1998) – <b>Small Business</b> is \$40M or less average annual gross revenues for three preceding years <b>Very Small Business</b> is average gross revenues of \$15M or less for the preceding three years
218-219 MHZ Service	First Auction special size standard (1994) – <b>Small Business</b> is an entity that, together with its affiliates, has no more than a \$6M net worth and, after federal income taxes (excluding carryover losses) has no more than \$2M in annual profits each year for the previous two years New Standard – <b>Small Business</b> is average gross revenues of \$15M or less for the preceding three years (includes affiliates and persons or entities that hold interest in such entity and their affiliates) <b>Very Small Business</b> is average gross revenues of \$3M or less for the preceding three years (includes affiliates and persons or entities that hold interest in such entity and their affiliates)
Satellite Master Antenna Television Systems	\$12.5 Million in Annual Receipts or Less
24 GHz – Incumbent Licensees	1,500 Employees or Fewer
24 GHz – Future Licensees	<b>Small Business</b> is average gross revenues of \$15M or less for the preceding three years (includes affiliates and persons or entities that hold interest in such entity and their affiliates) <b>Very Small Business</b> is average gross revenues of \$3M or less for the preceding three years (includes affiliates and persons or entities that hold interest in such entity and their affiliates)
<b>Miscellaneous</b>	
On-Line Information Services	\$18 Million in Annual Receipts or Less
Radio and Television Broadcasting and Wireless Communications Equipment Manufacturers	
Audio and Video Equipment Manufacturers	750 Employees or Fewer
Telephone Apparatus Manufacturers (Except Cellular)	1,000 Employees or Fewer
Medical Implant Device Manufacturers	500 Employees or Fewer
Hospitals	\$29 Million in Annual Receipts or Less
Nursing Homes	\$11.5 Million in Annual Receipts or Less
Hotels and Motels	\$6 Million in Annual Receipts or Less
Tower Owners	(See Lessee's Type of Business)

