

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

In the Matter of	)	
	)	
Mr. Jerry Smith	)	File No. EB-00-PA-414
	)	
125 Commonwealth Ave.	)	NAL/Acct. No. 200132400001
Claymont, Delaware	)	

**MEMORANDUM OPINION AND ORDER**

**Adopted: June 19, 2001**

**Released: June 21, 2001**

By the Chief, Enforcement Bureau:

**I. INTRODUCTION**

1. In this *Memorandum Opinion and Order* (“Order”), we grant in part and deny in part the Petition for Reconsideration (“Petition”) filed on May 21, 2001 by Jerry Smith (“Mr. Smith”). Mr. Smith seeks reconsideration of a *Forfeiture Order*,<sup>1</sup> in which the Chief, Enforcement Bureau, issued a monetary forfeiture in the amount of thirteen thousand five hundred dollars (\$13,500) for willful and repeated violations of Sections 95.409(a), 95.410(a) and 95.411(a)(1) of the Commission’s Rules (“Rules”).<sup>2</sup> The noted violations involve Mr. Smith’s operation of a Citizens Band (“CB”) Radio Station with a non-type-accepted transmitter, with a transmitter output power greater than four watts carrier power in the AM (A3) mode, and with an external RF power amplifier. For the reasons discussed below, we reduce the forfeiture amount to three thousand dollars (\$3,000).

**II. BACKGROUND**

2. In response to a complaint concerning interference to electronic equipment, the Philadelphia, Pennsylvania Field Office (“Field Office”) inspected the CB Radio Station operated by Mr. Smith. The inspection revealed the aforementioned violations. On January 12, 2000, the Field Office issued a *Notice of Violation* (“NOV”) for the violations. On January 21, 2000, the Field Office received a response to the NOV from Mr. Smith’s wife, Lisa Marie Smith (“Mrs. Smith”). The response indicated that the violations had been corrected. On April 13, 2000, the Field Office received notice from the Commission’s Gettysburg, Pennsylvania office that it received a referral from Senator William V. Roth concerning interference to home electronics caused by Mr. Smith’s operation of the CB station.

3. On April 28, 2000, the Chief, Enforcement Bureau, responded to Senator Roth indicating that the Field Office had performed an inspection of Mr. Smith’s CB station, noted a number of violations, and issued an NOV. The letter further noted that Field Office had received a response to the

<sup>1</sup> *Forfeiture Order*, NAL/Acct. No. 200132400001 (Enf. Bur., released April 20, 2001) (“*Forfeiture Order*”).

<sup>2</sup> 47 C.F.R. §§ 95.409(a), 95.410(a) and 95.411(a)(1).

*NOV* indicating that the violations had been corrected. Finally, the letter stated that any further problems should be reported to the Bureau's Technical and Public Safety Division ("TPSD"). On October 3, 2000, the Field Office received a referral from TPSD concerning interference to home electronics apparently due to Mr. Smith's operation of a CB station. On October 15, 2000, an agent from the Field Office monitored Mr. Smith's CB station from a location within a block of the station. On November 1, 2000, agents from the Field Office inspected Mr. Smith's CB station and the inspection revealed the aforementioned violations. On January 8, 2001, the Field Office issued a *Notice of Apparent Liability for Forfeiture*,<sup>3</sup> for \$13,500 to Mr. Smith for the noted violations. On April 20, 2001, the Chief, Enforcement Bureau, issued a *Forfeiture Order* which affirmed the \$13,500 forfeiture issued to Mr. Smith in the *NAL*. The *Forfeiture Order* stated that Mr. Smith had not filed a response, and we affirmed the forfeiture based on the information before us.

4. In his Petition, Mr. Smith does not dispute our finding that he operated a CB radio station in violation of the Commission's Rules. He disagrees, however, with the statement in the *Forfeiture Order* that he did not respond to the *NAL*. Mr. Smith claims that Mrs. Smith prepared and forwarded a response on his behalf to the Commission's headquarters in Washington, DC. According to the Petition, Mrs. Smith did not send the response by certified mail, nor did she retain a copy of her letter. Nonetheless, argues Mr. Smith, the Enforcement Bureau did receive the response because the Enforcement Bureau subsequently requested that he furnish additional information electronically.

5. Mr. Smith asserts, however, that the basis for his Petition is the Smiths' "desperate" financial situation, which compels them to seek remission of the forfeiture. In support of his argument of financial hardship, Mr. Smith includes various financial documents.

### III. DISCUSSION

6. As the *NAL* explicitly states, the forfeiture amount in this case was assessed in accordance with Section 503(b) of the Act,<sup>4</sup> Section 1.80 of the Rules,<sup>5</sup> and *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). Section 503(b) of the Act requires that the Commission 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 other such matters as justice may require.<sup>6</sup>

7. Mr. Smith's arguments do not justify cancellation of the entire forfeiture amount on the basis of financial hardship. We conclude however, that reduction of the proposed forfeiture amount to \$3,000 is appropriate. After considering the financial information submitted, we find that requiring Mr.

---

<sup>3</sup> *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200132400001 (Enf. Bur., Philadelphia Office, released January 8, 2001) ("*NAL*").

<sup>4</sup> 47 U.S.C. § 503(b)(2)(D).

<sup>5</sup> 47 C.F.R. § 1.80.

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

Smith to pay a \$13,500 forfeiture would impose a financial hardship and, consequently, we lower the proposed monetary forfeiture to \$3,000. With respect to Mr. Smith's contention that Mrs. Smith submitted a response to the *Forfeiture Order*, the Commission has no record of such a filing and Mr. Smith presents no evidence that the Commission ever received the filing. Similarly, we are unable to locate any record of a request for additional information, nor would such a request be routinely made. Nevertheless, we have addressed herein the arguments Mr. Smith raised in his Petition.

#### IV. ORDERING CLAUSES

8. **Accordingly, IT IS ORDERED** that, pursuant to Section 1.106 of the Rules, the Petition for Reconsideration of the *Forfeiture Order* in this proceeding is hereby **GRANTED IN PART AND DENIED IN PART**.

9. **IT IS FURTHER ORDERED** that, pursuant to Section 503(b) of the Act<sup>7</sup> and Section 1.80(f) of the Rules,<sup>8</sup> Mr. Jerry Smith, shall, within 30 days of the release of this *Memorandum Opinion and Order*, pay the amount of \$3,000 for violating Sections 95.409(a), 95.410(a) and 95.411(a)(1) of the Rules. If the forfeiture is not paid within the specified period, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.<sup>9</sup> Payment may be made 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 NAL/Acct. No. 200132400001. Requests for full payment under an installment plan should be sent to: Revenue and Receivables Operations Group, 445 12<sup>th</sup> Street, S.W., Washington, D.C. 20554.<sup>10</sup>

10. **IT IS FURTHER ORDERED** that, a copy of this *Memorandum Opinion and Order* shall be sent by certified mail, return receipt requested, to counsel for Mr. Jerry Smith, Lewis H. Goldman, Esq., 45 Dudley Court, Bethesda, Maryland, 20814, and to Mr. Jerry Smith, 125 Commonwealth Avenue, Claymont, Delaware, 19703.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon  
Chief, Enforcement Bureau

---

<sup>7</sup> 47 U.S.C. § 503(b)

<sup>8</sup> 47 C.F.R. § 1.80(f)

<sup>9</sup> 47 U.S.C. § 504(a).

<sup>10</sup> See 47 C.F.R. § 1.1914.