

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

**In the Matter of**

Mike Morrison  
3880 Nowlin Road  
Kennesaw, GA 30144

)  
)  
)  
)  
)

**File No. EB-00-AT-1083**

**NAL/Acct. No. X3248005**

**FORFEITURE ORDER**

**Adopted: January 25, 2001**

**Released: January 29, 2001**

By the Chief, Enforcement Bureau:

**I. INTRODUCTION**

1. In this Forfeiture Order (“Order”), we issue a monetary forfeiture in the amount of two thousand dollars (\$2,000) against Mike Morrison, d/b/a Morrison Sales Company (“Morrison”) for violating Section 302 of the Communications Act of 1934, as amended (“Act”)<sup>1</sup> by marketing non-compliant devices for use in the FM broadcast band. The noted violations involve the sale of at least 12 FM transmitters that exceeded the field strength limitations prescribed by Section 15.239 of the Commission’s Rules (“the Rules”)<sup>2</sup> for non-licensed, low-powered transmitters.

2. On October 11, 2000, the District Director of the Atlanta, Georgia, Field Office (“Atlanta Office”) issued a *Notice of Apparent Liability for Forfeiture* (“NAL”) in the amount of two thousand dollars (\$2,000).<sup>3</sup> Morrison filed his response on November 1, 2000.

**II. BACKGROUND**

3. On September 28, 1999, agents from the Atlanta Office began an investigation into the marketing of low power FM transmitters following news reports about such transmitters. The agents found eleven SKY-2000 FM transmitters that had been distributed by Skywave Electronics (“Skywave”), Rockford, Illinois, and sold by Morrison. Field strength measurements taken during the investigation showed that the eleven transmitters exceeded the level authorized by Section 15.239 of the Rules.

4. On September 28, 1999, during an inspection of a SKY-2000 FM transmitter and on October 15, 1999, during an office interview, the agents verbally warned Morrison against the marketing of noncompliant low power devices. On November 25, 1999, the Atlanta Office issued Morrison an Official Notice of Violation for violation of Section 302 of the Act (marketing noncompliant devices). In his response to the NOV, Morrison asserted his intention to comply with Section 302.

5. On August 16, 2000, an agent from the Atlanta Office inspected a SKY-2000 FM transmitter operating at the Chick-fil-A restaurant in Marietta, Georgia (“Chick-fil-A”), and found that the transmitter’s field strength exceeded the level authorized by Section 15.239 of the Rules for non-licensed

<sup>1</sup> 47 U.S.C. § 302a.

<sup>2</sup> 47 C.F.R. § 15.239.

<sup>3</sup> *Notice of Apparent Liability for Forfeiture*, NAL/No. X3248003 (Enf. Bur., Atlanta Office, released May 9, 2000).

low-powered transmitters. The owner of Chick-fil-A stated that he acquired the SKY-2000 FM transmitter from Morrison in May 2000.

6. In his response to the NAL, Morrison asserts that he “gave” the restaurant an “older” SKY-2000 FM transmitter and charged “only for production work . . . on a monthly basis.” Morrison also asserts that does not have the apparatus or the technical ability to determine whether the devices he markets are compliant and contends that he should be able to rely on Skywave’s representation that its devices are compliant.

### III. DISCUSSION

7. As the NAL explicitly states, the Atlanta Office assessed the proposed forfeiture amount in this case in accordance with Section 503 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) (“*Policy Statement*”). Section 503(b) of the Act requires that, in examining Morrison’s response, 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>

8. Section 302 of the Act provides, in pertinent part, that: “No person shall . . . sell . . . devices . . . which fail to comply with the regulations promulgated pursuant to this section.” Section 15.239 of the Rules<sup>7</sup> specifies the permissible field strength level for non-licensed low-powered transmitters which operate in the 88-108 MHz FM broadcast band.

9. It is undisputed that Morrison transferred a SKY-2000 FM transmitter which did not comply with the field strength level specified by Section 15.329 of the Rules to Chick-fil-A. We reject Morrison’s claim that he “gave” rather than sold that transmitter to Chick-fil-A. First, Morrison is engaged in a for-profit business and clearly received a pecuniary benefit from transferring the SKY-2000 FM transmitter to Chick-fil-A. Furthermore, the owner of Chick-fil-A stated to a Commission agent that he acquired the SKY-2000 FM transmitter as part of a package arrangement for which he paid approximately \$900 and which also included monthly programming “updates” for one year at no additional cost (\$25 per month after one year). The transaction between Morrison and Chick-fil-A clearly constituted a sale.

10. It is Morrison’s responsibility to ensure that the radio frequency devices he sells are compliant with the field strength level specified by the Rules. At the time Morrison sold the SKY-2000 FM transmitter to Chick-fil-A, he knew that Skywave had distributed eleven noncompliant SKY-2000 FM transmitters which Skywave claimed were compliant. Morrison, therefore, should have known that he could not rely on Skywave’s representations of compliance. It was essential for Morrison to independently determine whether the SKY-2000 FM transmitter was compliant before selling it to Chick-fil-A but he did not do so. Since Morrison could have engaged a contractor to make an independent

---

<sup>4</sup> 47 U.S.C. § 503(b).

<sup>5</sup> 47 C.F.R. § 1.80.

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

<sup>7</sup> 47 C.F.R. § 15.239.

determination, his assertion that he lacked the necessary apparatus and the technical ability cannot excuse his failure to make an independent determination.

11. We conclude that there is no basis for rescission or mitigation of the proposed monetary forfeiture and that \$2,000 is the proper amount.

#### IV. ORDERING CLAUSES

12. Accordingly, **IT IS ORDERED THAT**, pursuant to Section 503(b) of the Act,<sup>8</sup> and Sections 0.111, 0.311 and 1.80(f)(4) of the Rules,<sup>9</sup> Mike Morrison **IS LIABLE FOR A MONETARY FORFEITURE** in the amount \$2,000 for willfully and repeatedly violating the provisions of Section 302 of the Act, which prohibits the sale of noncompliant radio frequency devices.

13. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Commission's Rules<sup>10</sup> within 30 days of the release of this 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>11</sup> Payment shall 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. 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>12</sup>

14. **IT IS FURTHER ORDERED** that a copy of this Order shall be sent by Certified Mail Return Receipt Requested to Mike Morrison at 3880 Nowlin Road, Kennesaw, GA 30144.

#### FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon  
Chief, Enforcement Bureau

---

<sup>8</sup> 47 U.S.C. § 503(b).

<sup>9</sup> 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4).

<sup>10</sup> 47 C.F.R. § 1.80.

<sup>11</sup> 47 U.S.C. § 504(a).

<sup>12</sup> See 47 C.F.R. § 1.1914.