

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

In the Matter of Appeal of)
GARY D. WHITE)
Appeal of Local Sanction Pursuant to Section)
302a(f) of the Communications Act)

ORDER

Adopted: December 26, 2001

Released: December 27, 2001

By the Chief, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau:

1. Introduction. We have before us an appeal pursuant to Section 302a(f) of the Communications Act of 1934, as amended (Communications Act)1 filed by Mr. Gary D. White (White).2 White appeals his conviction under Section 35-45-1-3(1) of the Illinois Criminal Code for Disorderly Conduct arising from the use of his Citizen’s Band (CB) radio. For the reasons set forth below, we dismiss White’s appeal.

2. Background. On November 22, 2000, Congress amended the Act to allow state and local governments to enact statutes or ordinances prohibiting violations of the rules of the Federal Communications Commission (FCC or Commission) that: (1) prohibit the use of CB radio equipment not authorized by the Commission; and (2) prohibit the unauthorized operation of CB radio equipment on frequencies between 24 MHz and 35 MHz.3 Congress took this action to “improve enforcement of . . . FCC rules governing CB radios” in recognition that “a small number of people are using their CB radios in a manner not permitted under the FCC rules.”4 Congress concluded that “[s]uch behavior [was] causing unnecessary and harmful interference for other people using radio devices operating in nearby spectrum bands, including consumer telephones and televisions.”5 Congress allowed “a person affected by the decision of a State or local government agency enforcing a statute or ordinance under paragraph (1)” of Section 302a(f) to appeal such decision to the Commission on the grounds that the State or local government had acted outside the authority provided in such subsection.6 If the Commission determines that the State or local government acted outside the authority granted by Section 302a(f), the Commission is authorized to preempt that decision.7

1 47 U.S.C. § 302a(f).

2 See Letter to Federal Communications Commission, Reference Appeal of Local Sanction/Cause Number: 82DO5-0007-CM-04137, dated January 28, 2001 (“White Appeal”).

3 Pub. L. No. 106-521, 114 Stat. 2438 (2000).

4 H.R. REP. No. 106-883, at 2 (2000).

5 Id.

6 47 U.S.C. § 302a(f)(4).

7 47 U.S.C. § 302a(f)(4)(D).

3. White, an Illinois resident, is the owner and operator of a CB radio. In 1997, he was advised by the Chief Deputy Prosecuting Attorney for Vanderburgh, Illinois, that, while legitimate conversation on his CB radio was permitted so long as his equipment complied with the applicable FCC requirements, “conversation that is unreasonably loud, offensive, or harassing or threatening to anyone who receives the transmission will not be tolerated.”⁸ On August 1, 2000, White was cited for disorderly conduct, pursuant to Section 35-45-1-3 of the Illinois Criminal Code, in connection with the use of his CB radio.⁹ According to White, the citation was based on the interference of White’s CB radio equipment with a neighbor’s telephone and television, and was not based on his use of illegal equipment or illegal power.¹⁰ Pursuant to a request from White, the Commission’s Enforcement Bureau provided the Chief Deputy Prosecuting Attorney for the 1st District of Evansville, Indiana with statutes, legislative history, cases and FCC regulations pertaining to the Commission’s exclusive jurisdiction over radio frequency interference.¹¹ White was tried and convicted of the disorderly conduct offense on December 20, 2000. He received a sixty-day suspended sentence and a fine of \$225.00.¹² On January 28, 2001, White appealed his disorderly conduct conviction to the Commission, asserting that the conviction was a violation of Section 302a(f) of the Communications Act.¹³

4. *Discussion.* By its express terms, Section 302a(f) of the Communications Act only addresses two types of state and local regulations: (1) those seeking to prohibit the use of CB radio equipment not authorized by the Commission, and (2) those that prohibit the unauthorized operation of CB radio equipment on a frequency between 24 MHz and 35 MHz.¹⁴ In enacting such legislation, the state must identify that they are taking such action pursuant to Section 302a(f).¹⁵ The right to appeal to the Commission is limited to a decision enforcing one of the two types of regulations described above.¹⁶

5. Based on our review of the record before us, we conclude that the substance of the White Appeal is not cognizable under Section 302a(f) and therefore should be dismissed. First, we note that White’s conviction was not based upon the use of unauthorized CB equipment or the unauthorized operation of CB equipment in the 24-35 MHz. Consequently, we conclude that the subject infraction under the Illinois criminal laws does not fall squarely within the scope of the regulations covered by Section 302a(f). Instead, White alleges that he was convicted because his equipment allegedly interfered with a neighbor’s telephone and television. Such interference, in and of itself, is not a *per se* violation of the Commission’s Rules.¹⁷ Second, we note that the disorderly conduct statute under which White was

⁸ See Letter to Gary White from the Office of the Prosecuting Attorney, Stanley M. Levco, Prosecuting Attorney 1st Judicial District, Evansville, Indiana, dated September 9, 1997.

⁹ See County of Vanderburgh, City of Evansville Summons #345973, Issued to Gary D. White, dated July 26, 2000.

¹⁰ See White Appeal at 1.

¹¹ See Letter to Gary White, Reference EB-00-TS-276, dated November 3, 2000.

¹² See White Appeal at 1.

¹³ *Id.*

¹⁴ 47 U.S.C. § 302a(f)(1).

¹⁵ See 47 U.S.C. § 302a(f)(2); see also Pub. L. No. 106-521, 114 Stat. 2438 at 6.

¹⁶ 47 U.S.C. § 302a(f)(4)(A).

¹⁷ It is possible for home electronic equipment to experience interference from a CB radio user operating fully in accordance with the Commission Rules. See *In the Matter of Radio Frequency (RF) Interference to Electronic Equipment, Notice Inquiry*, 70 FCC 2d 1685, 1686-87 ¶¶4-5 (1978). On the other hand, such interference could also result from operation in a manner that violated the Commission’s Rules (for example, operating with power in excess of that allowed by 47 C.F.R. § 95.410). See Charles A. Stevens, 75 FCC 2d. 285, 287 ¶¶7-9, 289 ¶¶14-15 (1978). However, the record before us does not demonstrate that the conviction was based upon any specific violation of the Commission’s Rules.

convicted was not passed pursuant to Section 302a of the Act and was in fact enacted in 1976.¹⁸ Thus, the record in this proceeding does not indicate that the subject Illinois statute was enacted pursuant to Section 302a(f) - another statutory requirement for a cognizable appeal under the Communications Act. In sum, because we find that White's conviction does not fall within the limited category of cases for which Congress authorized an appeal to the Commission under Section 302a(f) of the Communications Act, we conclude that we must dismiss the White appeal.

6. Accordingly, IT IS ORDERED that pursuant to Sections 4(i) and 302a(f) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 302a(f), Gary D. White's Appeal of Local Sanction to the Commission pursuant to Section 302a(f) of the Communications Act filed on January 28, 2001, IS DISMISSED.

7. This action is taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

D'wana R. Terry
Chief, Public Safety and Private Wireless Division
Wireless Telecommunications Bureau

¹⁸ See IC 35-45-1-3, as added by Acts 1976, P.L. 148 § 5 p. 718; 1977, P.L. 340, § 70; p. 1533; P.L. 92-1988 § 8.