

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

In the Matter of)	File No. EB-03-PA-003
)	
Dominic DeNaples)	NAL/Acct. No. 200332400009
400 Mill Street)	
Dunmore, Pennsylvania 18512)	FRN No. 0008-27-4771

FORFEITURE ORDER

Adopted: July 2, 2004

Released: July 7, 2004

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this *Forfeiture Order* (“*Order*”), we issue a monetary forfeiture in the amount of four thousand dollars (\$4,000) to Dominic DeNaples for willful violation of Section 1.903(a) of the Commission’s Rules (“*Rules*”).¹ The noted violation involves Mr. DeNaples’ operation of radio communications equipment on the unauthorized frequency 154.515 MHz.

2. On March 27, 2003, the Commission’s Philadelphia District Office (“*Philadelphia Office*”) issued a *Notice of Apparent Liability for Forfeiture* (“*NAL*”) to Dominic DeNaples for a forfeiture in the amount of four thousand dollars (\$4,000).² Mr. DeNaples filed a response to the *NAL* on April 22, 2003. In his response, Mr. DeNaples requested that the Commission rescind the forfeiture.³

II. BACKGROUND

3. On January 14, 2003, in response to a complaint received by the Philadelphia Office alleging harmful co-channel interference caused by an unidentified auto parts dealer on frequency 154.515 MHz near Nescopeck, Pennsylvania, an agent from the Philadelphia Office used direction-finding techniques to locate the source of the transmissions at DeNaples Auto Parts at 400 Mill Street in Dunmore, Pennsylvania 18512. After observing and recording the transmissions on frequency 154.515 MHz from 2:30 p.m. until 3:15 p.m. on January 14, 2003, the agent visited DeNaples Auto Parts to inspect the radio communications equipment.

4. Dominic DeNaples, owner of DeNaples Auto Parts, acknowledged that he owned the radio communications equipment, and was responsible for its operation. When asked to produce a license to operate on frequency 154.515 MHz, Mr. DeNaples produced a copy of the license for station WNKK817. The license for WNKK817, however, only authorized operation of radio communications equipment on frequencies 452.1750 MHz and 457.1750 MHz at 400 Mill Street, Dunmore, Pennsylvania 18512. Mr. DeNaples, when asked, could produce no license authorizing operation on frequency

¹ 47 C.F.R. § 1.903(a).

² *Notice of Apparent Liability for Forfeiture*, File No. EB-03-PA-003, NAL/Acct. No. 200332400009 (Enf. Bureau, Philadelphia Office, released March 27, 2003).

³ DeNaple’s Response at page 1.

154.515 MHz, though he admitted to operating on that frequency for several years. A subsequent search of Commission records revealed no authorization for Dominic DeNaples to operate radio communications equipment on the frequency 154.515 MHz.

5. On March 27, 2003, the Philadelphia Office issued an *NAL* to Dominic DeNaples in the amount of four thousand dollars (\$4,000) for operating radio communications equipment on an unauthorized frequency in violation of Section 1.903(a) of the Rules.⁴ Mr. DeNaples responded to the *NAL* on April 22, 2003. In his response, Mr. DeNaples conceded that he operated on frequency 154.515 MHz, but argued that he applied for and was issued a license for that frequency more than thirty years ago.⁵

III. DISCUSSION

6. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Communications Act of 1934, as amended, (“Act”),⁶ Section 1.80 of the Rules,⁷ 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*”). In examining Dominic DeNaples’ response, 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 such other matters as justice may require.⁸

7. Section 1.903(a) of the Rules requires that, “[s]tatements in the Wireless Radio Services must be used and operated only in accordance with the rules applicable to their particular service as set forth in this title and with a valid authorization granted by the Commission under the provisions of this part.”⁹ Dominic DeNaples, on January 14, 2003, operated radio communications equipment on frequency 154.515 MHz without Commission authorization and, thus, in violation of Section 1.903(a) of the Rules.

8. In his response, Mr. DeNaples claimed that he did not operate on frequency 154.515 MHz illegally; instead, he submits that he held the appropriate Commission authorization for such operation. Mr. DeNaples, however, provided no proof of any such authorization either during the agent’s inspection or in his response letter. The only proof of any authorization to operate on the frequency 154.515 MHz offered by Mr. DeNaples is a copy of a license he submitted with his response. That license, however, became effective on March 31, 2003, well after the agent inspected Mr. DeNaples’ radio communications equipment. Further, Commission records indicated that Mr. DeNaples did not have a license to operate on the frequency 154.515 MHz prior to the inspection date, and did not file the license application requesting authority to operate on frequency 154.515 MHz until January 22, 2003, more than one week after the inspection of his radio communications equipment. Therefore, Mr. DeNaples had no authority to operate on the frequency 154.515 MHz on January 14, 2003.

9. We have examined Dominic DeNaples’ response to the *NAL* pursuant to the statutory factors above, and in conjunction with the *Policy Statement* as well. As a result of our review, we conclude that

⁴ *NAL* at ¶ 1.

⁵ DeNaples’ Response at page 1. Attached to his response, Mr. DeNaples sent a copy of a license for station WPXG564 authorizing operation on frequency 154.515 MHz with an effective date of March 31, 2003.

⁶ 47 U.S.C. § 503(b).

⁷ 47 C.F.R. § 1.80.

⁸ 47 U.S.C. § 503(b)(2)(D).

⁹ 47 C.F.R. 1.903(a).

Mr. DeNaples willfully violated Section 1.903(a) of the Commissions Rules,¹⁰ and we find no basis for rescinding or reducing the \$4,000 forfeiture for this violation.

IV. ORDERING CLAUSES

10. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Act, and Sections 0.111, 0.311 and 1.80(f)(4) of the Rules,¹¹ Dominic DeNaples **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of four thousand dollars (\$4,000) for violating Section 1.903(a) of the Commission's Rules.

11. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules 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.¹² 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 reference NAL/Acct. No. 200332400009 and FRN 0008-27-4771. Requests for full payment under an installment plan should be sent to: Chief, Revenue and Receivables Group, 445 12th Street, S.W., Washington, D.C. 20554.¹³

12. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by First Class Mail and Certified Mail, Return Receipt Requested, to Dominic DeNaples, 400 Mill Street, Dunmore, Pennsylvania 18512.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon
Chief, Enforcement Bureau

¹⁰ Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that “[t]he term ‘willful,’ ... means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act or any rule or regulation of the Commission authorized by this Act” See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387, 4388 (1991) (forfeiture to an AM radio station for willful violation of sponsorship identification, even though the AM radio station did not know its actions violated any rule or law).

¹¹ 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4).

¹² 47 U.S.C. § 504(a).

¹³ See 47 C.F.R. § 1.1914.