

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

In the Matter of)	
)	
Jack Gerritsen)	File No. EB-03-LA-286
6217 ½ Palm Avenue)	NAL/Acct. No. 200432900004
Bell, California 90201)	FRN 0005240072
)	

FORFEITURE ORDER

Adopted: October 1, 2004

Released: October 5, 2004

By the Assistant Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this *Forfeiture Order* (“*Order*”), we issue a monetary forfeiture in the amount of ten thousand dollars (\$10,000) to Jack Gerritsen (“Gerritsen”) for willful and repeated violations of Section 301 of the Communications Act of 1934, as amended (“Act”).¹ The noted violations involve Gerritsen operating a radio station in the Amateur Radio Services without authorization from the Federal Communications Commission (“Commission”).

2. On June 15, 2004, the Commission's Los Angeles, California Field Office (“Los Angeles Office”) issued a *Notice of Apparent Liability for Forfeiture* (“NAL”) to Gerritsen in the amount of ten thousand dollars (\$10,000) for apparently willfully and repeatedly violating Section 301 of the Act by operating a radio station in the Amateur Radio Service without authorization from the Commission.² Gerritsen filed a response to the NAL on July 13, 2004.

II. BACKGROUND

3. On December 28, 1999, Jack Gerritsen was arrested by the California Highway Patrol and charged with violating sections of the California Penal Code that prohibit intercepting, obstructing and/or interfering with police radio communications.³ Gerritsen was convicted of interfering with police

¹47 U.S.C. § 301.

²*Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200432900004 (Enf. Bur., Los Angeles Office, released June 15, 2004).

³*FCC Investigation Leads to Arrest of Suspect Interfering with Police Frequencies in the Los Angeles Area* (2000 WL 6306 (F.C.C.) Released January 7, 2000) (“FCC Press Release”). According to the FCC Press Release, “[s]everal Los Angeles area police departments and other licensees had filed complaints with the Commission concerning what was described as intentional interference on their assigned frequencies. . . . In addition to the California Penal Code violations, the Commission’s Enforcement Bureau has determined that the suspect’s actions were also in violation of Section 301 of the Communications Act.”

radio communications on June 6, 2000.⁴ Gerritsen's subsequent probation included that he not possess any radio transmitting devices and not interfere with police or FCC activity.⁵ On November 14, 2001, the Commission's Wireless Telecommunications Bureau set aside, on its own motion, amateur radio station license KG6IRO, which was granted to Gerritsen on November 7, 2001.⁶ Gerritsen was notified that the action was taken because of complaints about the operation of Gerritsen's station and because of questions regarding his qualification to be a licensee in light of his 1999 arrest and 2000 conviction for radio interference to police communications.⁷ Gerritsen was warned that "you have no authority to operate radio transmitting equipment, and such operation would be a violation of Section 301 of the Communications Act of 1934, as amended, 47 U.S.C. Section 301, subjecting you to monetary penalties and imprisonment."⁸

4. On December 9, 2001, the Bell California Police Department notified the Commission's Los Angeles Office that they had received complaints against Gerritsen for radio transmissions. On December 28, 2001, the Acting District Director of the Los Angeles Office issued a warning letter to Gerritsen for unlicensed operation and advised him to immediately discontinue operating his unlicensed radio station.⁹ Gerritsen replied on January 2, 2002, asserting that the Commission's set-aside of his amateur license was improper.¹⁰ On January 29, 2002, Officers from the Bell Police Department and the California Highway Patrol arrested Gerritsen for violation of his probation.¹¹ On May 7, 2002, Gerritsen was found to have violated his probation and sentenced.¹²

5. Soon after Gerritsen's release from prison on July 28, 2003, the Commission's Los Angeles Office began receiving complaints of unauthorized and unlicensed radio transmissions over local amateur, business and public safety radio repeater systems.¹³ The complaints alleged that the person

⁴See Municipal Court of Long Beach Judicial District, County of Los Angeles, State of California, Case No. 0SE01792: People vs. Jack Gerritsen, June 6, 2000.

⁵See Municipal Court of Long Beach Judicial District, County of Los Angeles, State of California, Case No. 0SE01792: People vs. Jack Gerritsen, June 6, 2001.

⁶See November 21, 2001, letter from W. Riley Hollingsworth, Special Counsel, Enforcement Bureau, Federal Communications Commission, to Mr. Jack Gerritsen ("November 21, 2001 Enforcement Bureau Letter"). The action was taken pursuant to Section 1.113(a) of the Rules which states that "within 30 days after public notice has been given of any action taken pursuant to delegated authority, the person, panel, or board taking the action may modify or set it aside on its own motion." 47 C.F.R. § 1.113(a).

⁷November 21, 2001, Enforcement Bureau Letter.

⁸November 21, 2001, Enforcement Bureau Letter.

⁹December 28, 2001, letter from Catherine Deaton, Acting District Director, Los Angeles Office, Enforcement Bureau, Federal Communications Commission.

¹⁰January 2, 2002, letter from Jack Gerritsen to Catherine Deaton, Acting District Directors, Enforcement Bureau, Federal Communications Commission.

¹¹See Bell Police Department-Supplemental/Arrest Report 01-6723, dated January 29, 2002.

¹²See The Municipal Court of Long Beach Judicial District, County of Los Angeles, State of California, Case No. 0SE01792: People vs. Jack Gerritsen, May 7, 2002.

¹³See e.g., September 19, 2003, Amateur Radio Relay League (ARRL) Complaint; November 6, 2003 Bell Gardens Police Department Sgt. Jerry Winfrey's complaint.

making the transmissions identified himself as “KG6IRO.”¹⁴ Based upon these complaints, an agent from the Los Angeles Office conducted an investigation. On November 6, 2003, using mobile direction finding techniques, the agent identified transmissions over radio frequencies 146.012 MHz, 146.325 MHz and 146.4868 MHz emanating from 6217 ½ Palm Avenue, Bell, California, which was known to the agent as Gerritsen’s residence. The agent observed Gerritsen sitting in his driveway holding a small portable radio transceiver. The agent positively identified Gerritsen as the operator of the radio transmitting on the frequencies 146.012 MHz, 146.325 MHz and 146.4868 MHz.

6. On November 7, 2003, agents from the Los Angeles Office, using mobile radio direction finding techniques, identified transmissions over radio frequencies 146.012 MHz and 146.610 MHz emanating from Gerritsen’s residence. Gerritsen was once again positively identified and observed by the agents in his driveway holding a small portable two-way radio. Agents interviewed Gerritsen and he admitted to transmitting on various Amateur radio frequencies as well as various Business radio frequencies. Gerritsen could not produce a valid station license for either the Amateur radio service or any other radio service.

7. On December 5, 2003, the District Director of the Los Angeles Field Office issued a Notice of Unlicensed Radio Operation (“Notice”) to Gerritsen.¹⁵ Gerritsen responded to the Notice on December 9, 2003, stating that the Los Angeles Office should “cease and desist in any more enforcement [sic] efforts until such time as a hearing is held and a decision against me has been determined and an additional 15 days after any such adverse decision, as provided by F.C.C. rules and regulations”¹⁶

8. On February 9, 2004, acting on numerous additional complaints filed with the Commission since the December 5, 2003 Notice, agents of the Los Angeles Office, using mobile radio direction finding techniques, identified transmissions over radio frequency 147.690 MHz emanating from Gerritsen’s residence. The agents left a message on Gerritsen’s telephone answering machine. In a subsequent telephone interview, the agents requested an inspection of Gerritsen’s radio equipment located at his residence. Gerritsen refused the inspection. The Commission continues to receive complaints of unauthorized operation by an operator identifying as KG6IRO.

9. On June 15, 2004, the Los Angeles Office issued the *NAL* to Gerritsen for violation of Section 301 of the Act. On July 13, 2004, Gerritsen submitted a response to the *NAL*. In that response, Gerritsen argues that he has a valid amateur license that permits him to operate on all of the radio frequencies detailed in the *NAL*; that the *NAL* does not show that his conviction for intentional interference is under appeal; that the “set-aside” of amateur license KG6IRO was unfounded; that the “set-aside” does not prohibit him from transmitting on the amateur radio bands given his valid amateur license; and that any possible suspension of his license is also pending a hearing before an Administrative Law Judge, making the *NAL* moot until the suspension occurs.

¹⁴At the time the *NAL* was issued, the KG6IRO Amateur Radio Call Sign was listed as “terminated” in the Commission’s databases.

¹⁵December 5, 2003, Notice from Catherine Deaton, District Director, Los Angeles Office, Enforcement Bureau, Federal Communications Commission. The Notice warned Gerritsen that operation of a radio transmitter in the Amateur Radio Service without a valid authorization violated 47 U.S.C § 301 and outlined potential penalties for operating an unlicensed station in violation of 47 U.S.C. § 301, including seizures of equipment, fines and imprisonment. The Notice requested a reply within fifteen (15) days.

¹⁶December 7, 2003, letter from Jack Gerritsen to Catherine Deaton, District Director, Federal Communications Commission.

III. DISCUSSION

10. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Communications Act of 1934, as amended (“Act”),¹⁷ Section 1.80 of the Rules,¹⁸ and *The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines* (“*Forfeiture Policy Statement*”).¹⁹ In examining Gerritsen’s 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 other such matters as justice may require.²⁰

11. Section 301 of the Act requires 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. On November 6, 2003, November 7, 2003, and February 9, 2004, Gerritsen operated radio transmitting equipment at 6217 ½ Palm Avenue, Bell, California, on the frequencies 146.012 MHz, 146.325 MHz, 146.4868 MHz, 146.610 MHz and 147.690 MHz without the required Commission authorization. Gerritsen does not dispute that he engaged in transmissions using the amateur frequencies.

12. Gerritsen argues that the “alleged set-aside” of his amateur license, KG6IRO, is unfounded and is only a claim made by Commission personnel. Gerritsen contends that any “set-aside” does not prohibit him from using his amateur license to transmit on amateur bands. This is incorrect. Commission records show that Gerritsen was granted amateur radio station license KG6IRO on November 7, 2001, and that the grant of the license was set aside, pursuant to Section 1.113(a) of the Commission’s Rules²¹ on November 14, 2001. Section 1.113(a) states that within 30 days of public notice of any action taken pursuant to delegated authority, “the person, panel or board taking the action may modify or set it aside on its own motion.”²² Gerritsen was notified of this action by letter dated November 21, 2001 which also informed Gerritsen that “[y]our application reverts to a pending status.”²³ As the Commission has explained, it is able to “set aside” an action within the meaning of Section 1.113 “when it deliberately changes course by vacating a decision that it later determines to have been ill-advised.”²⁴ As Commission correspondence to Gerritsen shows, after his amateur license was “set aside,” his application for an amateur license returned to pending status. Consequently, no license exists authorizing Gerritsen to use the amateur frequencies he was found to be using in the NAL.

¹⁷47 U.S.C. § 503(b).

¹⁸C.F.R. § 1.80.

¹⁹12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999).

²⁰47 U.S.C. § 503(b)(2)(D).

²¹47 C.F.R. § 1.113(a).

²²47 C.F.R. § 1.113(a).

²³November 21, 2001, Enforcement Bureau Letter.

²⁴*In the Matter of Stale or Moot Docketed Proceedings*, 19 FCC Rcd 2527, 2531 (2004).

13. Gerritsen argues that he has preserved his license by filing a letter with the Commission, pursuant to Section 1.85 of the Rules,²⁵ and asking for a hearing concerning his license. Gerritsen further contends that, in correspondence from the Commission, he has been told that he will have a hearing in front of an Administrative Law Judge. We find that Gerritsen has misinterpreted both Section 1.85 and the correspondence he has received from the Commission. Section 1.85 details when the Commission may suspend an operator license.²⁶ As Gerritsen has no license, only a pending application, there is no license for the Commission to suspend and Section 1.85 is inapplicable.²⁷ The correspondence Gerritsen received from the Bureau informed Gerritsen that his amateur license had been set aside and that his “application will be designated for a hearing before an Administrative Law Judge in order to determine if [he is] qualified to obtain a Commission license.”²⁸ Neither Section 1.85 nor the correspondence Gerritsen received from the Commission granted him an amateur license or any authorization to use the amateur frequencies.²⁹

14. We have examined Gerritsen’s response to the NAL pursuant to the statutory factors above, and in conjunction with the *Forfeiture Policy Statement* as well. Based on the findings of the NAL and Gerritsen’s response, we find that Gerritsen’s violation of Section 301 of the Act was willful³⁰ and repeated.³¹ Considering the entire record and the statutory factors listed above, we find that neither cancellation nor reduction of the proposed \$10,000 forfeiture is warranted.

²⁵47 C.F.R. § 1.85.

²⁶*See, e.g., In the Matter of Leslie D. Brewer*, 16 FCC Rcd 5671 (2001).

²⁷Gerritsen also argues that 1.80(c) requires that no penalty be imposed against him if the violation occurred more than one year prior to the date on which the appropriate notice is given. Gerritsen contends the actions that his June 6, 2000 conviction was based upon occurred in 1999, and that the “set-aside” of his amateur license occurred in 2001, more than one year after his “alleged violation of law.” Section 1.80(c) concerns forfeiture penalties, not actions taken under Section 1.113, and, therefore, is not applicable here.

²⁸August 14, 2003 Letter from W. Riley Hollingsworth, Special Counsel, Enforcement Bureau to Jack Gerritsen. The letter also warned Gerritsen that his repeated attempts to contact the Office of Administrative Law Judges were in violation of the Commission’s rules against Ex Parte Communications set forth in Sections 1.1200 – 1.1216 of the Commission’s Rules, 47 C.F.R. §§ 1.1200 – 1.1216. *See also* October 15, 2003 Letter from W. Riley Hollingsworth, Special Counsel, Enforcement Bureau to Jack Gerritsen (notifying Gerritsen that his GMRS License WPYR527 was set aside pursuant to Section 1.113, and that his application has reverted to a pending status and will be made part of a forthcoming hearing to determine if Gerritsen is qualified to hold a Commission license).

²⁹Gerritsen also argues that his June 6, 2000 conviction of interfering with police radio communications is currently under appeal. We note that, as of this date, we have received no information indicating that the conviction has been reversed.

³⁰Section 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 (1991).

³¹As provided by 47 U.S.C. § 312(f)(2), a continuous violation is “repeated” if it continues for more than one day. The *Conference Report* for Section 312(f)(2) indicates that Congress intended to apply this definition to Section 503 of the Act as well as Section 312. *See* H.R. Rep. 97th Cong. 2d Sess. 51 (1982). *See Southern California Broadcasting Company*, 6 FCC Rcd 4387, 4388 (1991) and *Western Wireless Corporation*, 18 FCC Rcd 10319 at fn. 56 (2003).

IV. ORDERING CLAUSES

15. 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,³² Jack Gerritsen **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of ten thousand dollars (\$10,000) for willfully and repeatedly violating Section 301 of the Act.

16. 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.³³ Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment should note NAL/Acct. No. 200432900004 and FRN 0005240072. Payment by check or money order may be mailed to Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. Payment by overnight mail may be sent to Bank One/LB 73482, 525 West Monroe, 8th Floor Mailroom, Chicago, IL 60661. Payment by wire transfer may be made to ABA Number 071000013, receiving bank Bank One, and account number 1165259. 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. 20554.³⁴

17. **IT IS FURTHER ORDERED** that, a copy of this *Order* shall be sent by Certified Mail Return Receipt Requested and by First Class Mail to Jack Gerritsen, 6217 ½ Palm Avenue, Bell, California, 90201.

FEDERAL COMMUNICATIONS COMMISSION

George R. Dillon
Assistant Chief, Enforcement Bureau

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

³³47 U.S.C. § 504(a).

³⁴See 47 C.F.R. § 1.1914.