

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

In the Matter of
Robert A. Spiry
1516 S. 52nd Street
Tacoma, Washington
File Number EB-02-ST-045
NAL/Acct. No. 200332980002
FRN 0007-9392-18

FORFEITURE ORDER

Adopted: October 14, 2004

Released: October 18, 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 Robert A. Spiry ("Mr. Spiry") for willful and repeated violation of Section 301 of the Communications Act of 1934, as amended ("Act").

II. BACKGROUND

2. After receiving numerous complaints of interference to home electronics equipment from Citizen's Band ("CB") radio transmissions, the Commission's Seattle, Washington Field Office ("Seattle Office") determined on March 13, 2002; April 2, 2002; October 29, 2002; and November 5, 2002, that the interference resulted from CB transmissions originating from Mr. Spiry's residence and from his mobile station in his vehicle.

3. On December 30, 2002, the Seattle Office issued a Notice of Apparent Liability for Forfeiture ("NAL") in the amount of ten thousand dollars (\$10,000) to Mr. Spiry for operating a radio station without Commission authorization in apparent willful and repeated violation of Section 301 of the Act.

1 47 U.S.C. § 301.

2 47 C.F.R. § 95.409.

3 47 C.F.R. § 95.411.

4 Notice of Apparent Liability for Forfeiture, NAL/Acct. No. 200332980002 (Enf. Bur., Seattle Office, released December 30, 2002).

NAL. In his response, Mr. Spiry states that he has ceased CB radio transmissions and has obtained an amateur radio license. Mr. Spiry claims to have removed his CB radio antenna. Mr. Spiry also asserts that he was unaware that the amount of the forfeiture could be so high, and that he is unable to pay the forfeiture.

III. DISCUSSION

4. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Communications Act of 1934, as amended (“Act”),⁵ Section 1.80 of the Rules,⁶ 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 Mr. Spiry’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 such other matters as justice may require.⁷

5. Section 301 of the Act sets forth generally 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 this Act and with a license granted under the provisions of this Act. The rules governing the licensing and operation of CB radio stations are set forth within Subpart D of Part 95 of the Rules.⁸ Section 95.409 of the Rules states that a CB operator must use a FCC certified CB transmitter and that use of a non-certified transmitter voids the authority to operate the CB station. Section 95.411 of the Rules prohibits attaching a power linear amplifier to a CB transmitter in any way. On April 2, 2002 and November 5, 2002, Mr. Spiry operated his CB radio station with transmitters that were not FCC certified in violation of Section 95.409 of the Rules. On both occasions, Mr. Spiry also operated with a linear amplifier attached to his CB radio transmitter in violation of Section 95.411 of the Rules. Mr. Spiry’s operation of his CB radio station with unauthorized equipment voided his blanket CB license. Thus, on April 2, 2002 and November 5, 2002, Mr. Spiry was operating a radio station without a license in violation of Section 301 of the Act. Mr. Spiry does not dispute the violations. Therefore, we find that Mr. Spiry willfully⁹ and repeatedly¹⁰ violated Section 301 of the Act by the unauthorized CB operation.

6. We have examined Mr. Spiry’s response to the *NAL* pursuant to the statutory factors above, and in conjunction with the *Policy Statement*. We are not persuaded that the forfeiture amount should be reduced because of Mr. Spiry’s remedial efforts (i.e., ceased CB transmissions, obtained an

⁵ 47 U.S.C. § 503(b).

⁶ 47 C.F.R. § 1.80.

⁷ 47 U.S.C. § 503(b)(2)(D).

⁸ 47 C.F.R. § 95.401 *et seq.*

⁹ 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’, when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act” See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387-88 (1991).

¹⁰ As 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).

amateur license, removed CB equipment). As the Commission stated in *Seawest Yacht Brokers*, 9 FCC Rcd 6099, 6099 (1994), “corrective action taken to come into compliance with Commission rules or policy is expected, and does not nullify or mitigate any prior forfeitures or violations.”¹¹ Moreover, even though Mr. Spiry claims to have not known the potential penalties for his actions, we note that Mr. Spiry was given two Notices of Unauthorized Operation that explained that the monetary penalty for violating Section 301 of the Act could be as high as \$10,000. Furthermore, regarding Mr. Spiry’s claim of inability to pay the forfeiture, we note that, consistent with paragraph 14 of the *NAL*, the Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices (“GAAP”); or (3) some other reliable and objective documentation that accurately reflects the petitioner’s current financial status. Because Mr. Spiry has not provided adequate financial information from which we can determine his ability to pay the forfeiture, cancellation or reduction is not warranted.¹²

IV. ORDERING CLAUSES

7. 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,¹³ Mr. Robert A. Spiry **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of ten thousand dollars (\$10,000) for willful and repeated violation of Section 301 of the Act.

8. 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.¹⁴ Payment of the forfeiture must be made by check or similar instrument, payable to the order of the “Federal Communications Commission.” The payment must include the *NAL/Acct. No.* and *FRN No.* referenced above. 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 Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.¹⁵

9. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by first class mail and certified mail return receipt to Mr. Robert A. Spiry, 1516 S. 52nd Street, Tacoma, Washington 98408.

FEDERAL COMMUNICATIONS COMMISSION

George R. Dillon
Assistant Chief, Enforcement Bureau

¹¹ See also *AT&T Wireless Services, Inc.*, 17 FCC Rcd 21866, 21871 (2002).

¹² See *Michael S. Selvanto*, DA 04-2488 (Enf. Bur., released August 10, 2004) (finding no basis upon which to cancel or reduce a forfeiture where no financial documentation was presented to demonstrate inability to pay).

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

¹⁴ 47 U.S.C. § 504(a).

¹⁵ See 47 C.F.R. § 1.1914.