

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

In the Matter of)	
)	
David Michael Oaks)	File No. EB-03-PO-128
)	
Unlicensed FM Radio Station)	NAL/Acct. No. 200432920002
Beaverton, Oregon)	FRN # 0010288587

FORFEITURE ORDER

Adopted: November 3, 2004

Released: November 5, 2004

By the Assistant Bureau 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 Mr. David Michael Oaks (“Mr. Oaks”) for willfully and repeatedly violating Section 301 of the Communications Act of 1934, as amended (“Act”).¹ The noted violation involves Mr. Oaks’s operation of an unlicensed FM broadcast station on the frequency 98.1 MHz, at his residence in Beaverton, Oregon.

2. On March 12, 2004, the Commission’s Portland, Oregon Resident Agent Office (“Portland Office”) issued a *Notice of Apparent Liability for Forfeiture* (“NAL”) in the amount of ten thousand dollars (\$10,000) to Mr. Oaks.² Mr. Oaks filed a response to the NAL on March 22, 2004.

II. DISCUSSION

3. In responding, Mr. Oaks does not deny the subject violation. Mr. Oaks states that he was attempting to correct the violation by lowering the power each time he received a notice that he was operating an unlicensed station, but that the agent for the Portland Office (“agent”) did not provide the specific field strength measurements that he requested to determine how far above the legal limit he was operating. The Commission is not required to engineer the operating parameters of a station. Mr. Oaks asserts that the agent told him that the effective range for a transmitter operating pursuant to Part 15 of the Rules³ is about 100 feet, and that if Mr. Oaks chose to do so, he could purchase a Part 15 wireless microphone to compare the range of his signal with that of his station. Mr. Oaks did not choose to do so.⁴ Further, on several separate occasions prior to the Portland Office’s issuance of the NAL, Mr. Oaks

¹ 47 U.S.C. § 301.

² *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200432920002 (Enf. Bur., Portland Office, released March 12, 2004).

³ 47 C.F.R. § 15.1 *et. seq.*

⁴ On June 9, July 14 and September 16, 2003, Commission staff noted that the field strength of the station’s signal exceeded the permissible level for a non-licensed low-power radio transmitter.

received Notices of Unlicensed Operation (“Notice(s)”) from the Portland Office which served as warnings of the subject violation.⁵ Accordingly, Mr. Oaks was on notice that his continued operation of the station was in violation of Section 301 of the Act.

4. After reviewing Mr. Oaks’s response, we find that he “willfully”⁶ and “repeatedly”⁷ violated Section 301 of the Act. In addition, we conclude, pursuant to Section 503(b) of the Communications Act of 1934, as amended (“Act”)⁸ and *The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*,⁹ that no reduction of the proposed forfeiture is warranted.

III. ORDERING CLAUSES

5. Accordingly, **IT IS ORDERED THAT**, pursuant to Section 503(b) of the Act¹⁰ and Sections 0.111, 0.311 and 1.80(f)(4) of the Commission’s Rules,¹¹ Michael David Oaks **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.

6. 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 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/Act. 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. 20554.¹³

⁵ On June 9 and July 14, 2003, on-scene Notices were placed under Mr. Oaks’s door. On June 11 and September 17, 2003, formal Notices were issued to Mr. Oaks via certified and regular mail.

⁶ As provided by 47 U.S.C. § 312 (f)(1), “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 the Communications Act of 1934, as amended, (“Act”).

⁷ 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).

⁸ 47 U.S.C. § 503(b).

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

¹⁰ 47 U.S.C. § 503(b).

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

¹² 47 U.S.C. § 504(a).

¹³ See 47 C.F.R. § 1.1914.

7. **IT IS FURTHER ORDERED THAT** this *Order* shall be sent by first class mail and certified mail, return receipt requested, to Mr. Michael David Oaks, Beaver Creek Apartments, 12270 S.W. Center, Apt 43, Beaverton, Oregon 97005.

FEDERAL COMMUNICATIONS COMMISSION

George R. Dillon
Assistant Bureau Chief, Enforcement