

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

In the Matter of)	
)	File Number EB-03-TP-191
Tommie Salter)	
Jacksonville, Florida)	NAL/Acct. No. 200532700002
)	
)	FRN 0011485604
)	

FORFEITURE ORDER

Adopted: December 22, 2004

Released: December 27, 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 Tommie Salter for willful violation of Section 301 of the Communications Act of 1934, as amended (“*Act*”).¹ The noted violation involves Mr. Salter’s operation of a citizens band radio station without Commission authorization.

II. BACKGROUND

2. In response to complaints of interference, on March 18, 2004, an Official Notice was sent certified and regular mail to Mr. Salter, restricting the hours of operation for his citizens band (“*CB*”) radio station (“*March 18th Official Notice*”). On May 5, 2004, an Official Notice was sent to Mr. Salter advising him that he could resume normal operation of his *CB* radio station as long as he operated in full compliance with the Commission’s Rules. In July 2004, the Enforcement Bureau received several interference complaints regarding Mr. Salter’s *CB* radio station. In response to these complaints, another Official Notice was sent certified mail on July 15, 2004 to Mr. Salter, once again restricting his hours of operation (“*July 15th Official Notice*”). Specifically, Mr. Salter was restricted from operating between 6 a.m. and 11:59 p.m. On July 23, 2004, a certified mail return receipt was received at the Commission’s Tampa Office of the Enforcement Bureau (“*Tampa Office*”), which indicated that the *July 15th Official Notice* was received at Mr. Salter’s residence.

3. On August 10, 2004, agents from the Tampa Office located the source of a *CB* radio transmission to Mr. Salter’s residence at 9:59 a.m. The agents then inspected Mr. Salter’s *CB* radio station. The agents observed that Mr. Salter was operating a *CB* transmitter that was not FCC certificated for *CB* radio use. The agents warned him that such operation was in violation of Section 95.409(a) of the Commission’s Rules (“*Rules*”).

4. On October 18, 2004, the Tampa Office issued a *Notice of Apparent Liability for*

¹47 U.S.C. § 301.

Forfeiture to Mr. Salter in the amount of ten thousand dollars (\$10,000) for the apparent willful violation of Section 301 of the Act.² In his response, Mr. Salter requests cancellation of the proposed forfeiture, because he did not intend to violate the Rules and has not demonstrated a pattern of non-compliance. Mr. Salter admits that the July 15th Official Notice was delivered to his residence and signed for by a family member, but states he did not read it. He claims the July 15th Official Notice “wound up in his ‘FCC file’ unread.”³ He asserts he would have complied with the July 15th Official Notice, if he had read it, as he complied with the March 18th Official Notice. He also states he did not appreciate that use of non-certificated transmitters violated the Rules.

III. DISCUSSION

5. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Act,⁴ Section 1.80 of the Commission’s Rules (“Rules”),⁵ 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) (“*Forfeiture Policy Statement*”). In examining Mr. Salter’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.⁶

6. Section 301 of the Act states 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. Pursuant to Section 95.404 of the Rules, individual licenses are not required to operate CB radio stations.⁷ Individuals, however, are only authorized to operate their CB radio stations in accordance with the Rules.⁸ Section 95.409 of the Rules states that individuals may only use FCC certificated CB transmitters at their stations.⁹ Mr. Salter essentially argues that his violation was not willful, because he did not read the July 15th Official Notice and did not know that his hours were restricted.¹⁰ He also argues that his violation was not willful, because he did not know that it was unlawful to use a non-certificated transmitter. For a violation to be willful, it must be committed consciously and deliberately, irrespective of any intent to violate the Rules.¹¹ Mr. Salter

²*Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200532700002 (Enf. Bur., Tampa Office, October 18, 2004) (“*NAL*”).

³Salter response at 2.

⁴47 U.S.C. § 503(b).

⁵47 C.F.R. § 1.80.

⁶47 U.S.C. § 503(b)(2)(D).

⁷47 C.F.R. § 95.404.

⁸*Id.*

⁹47 C.F.R. § 95.409.

¹⁰According to the agents’ notes of the August 10th inspection, Mr. Salter acknowledged receipt of the July 15th Official Notice and stated it was unfair that he was the only operator in the area placed on restricted hours.

¹¹See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

admits that he operated his non-certificated CB transmitter at his CB station at 9:59 a.m. on August 10, 2004. He was placed on restricted hours when the July 15th Official Notice was received at his residence. It is irrelevant whether Mr. Salter knew he was violating the Rules, when he violated them. It is also irrelevant whether Mr. Salter violated other Rules in the past. Because Mr. Salter operated his CB station in a manner inconsistent with the Rules, he was not authorized pursuant to Section 95.404 to operate his CB station. Thus, based on the evidence, we find that Mr. Salter willfully¹² violated Section 301 of the Act by operating a CB radio station without the required authorization from the Commission on August 10, 2004.

7. Although Mr. Salter asserted he could never pay the proposed fine given his fixed Social Security income, he did not provide his tax returns, or any other documentation, as set forth in paragraph 15 of the *NAL*. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted. Accordingly, there is no basis to cancel the assessed forfeiture amount due to inability to pay.

8. We have examined Mr. Salter's response to the *NAL* pursuant to the statutory factors above, and in conjunction with the *Forfeiture Policy Statement*. As a result of our review, we conclude that Mr. Salter willfully violated Section 301 of the Act. We find no basis for cancellation or reduction of the \$10,000 forfeiture proposed for this violation.

IV. ORDERING CLAUSES

9. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.111, 0.311 and 1.80(f)(4) of the Commission's Rules,¹³ Tommie Salter **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of ten thousand dollars (\$10,000) for willfully violating Section 301 of the Act.

10. 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 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. The payment should note NAL/Acct. No. 200532700002, and FRN 0011485604. 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. 20554.¹⁵

11. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by First Class and

¹²Section 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).

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

¹⁴47 U.S.C. § 504(a).

¹⁵See 47 C.F.R. § 1.1914.

Certified Mail Return Receipt Requested to Tommie Salter, 3551 Dawson Street, Jacksonville, Florida 32209 and Donald E. Pinaud, Jr., 4069 Atlantic Boulevard, Jacksonville, Florida 32207.

FEDERAL COMMUNICATIONS COMMISSION

George R. Dillon
Assistant Chief, Enforcement Bureau