

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

In the Matter of)	
)	File Number EB-03-OR-013
Kermit L. Dilworth, Jr.)	
)	NAL/Acct. No. 200532620001
Owner of Citizens Band radio station)	
Columbus, Mississippi 39705)	FRN 0012329348

ORDER

Adopted: July 7, 2005

Released: July 11, 2005

By the Acting Chief, Enforcement Bureau:

1. The Enforcement Bureau (the "Bureau") has been investigating whether Kermit L. Dilworth, Jr. has violated Section 95.426(a) of the Commission's Rules,¹ by refusing to make his Citizen's Band ("CB") radio station available for inspection,² pursuant to Section 303(n) of the Communications Act of 1934, as amended ("Act").³
2. The Bureau and Mr. Dilworth have negotiated the terms of the Consent Decree, a copy of which is attached hereto and incorporated by reference.
3. After reviewing the terms of the Consent Decree and evaluating the facts before us, we find that the public interest would be served by approving the Consent Decree and terminating the investigation.
4. **ACCORDINGLY, IT IS ORDERED** that, pursuant to section 4(i) of the Communications Act of 1934, as amended,⁴ and the authority delegated by sections 0.111 and 0.311 of the Commission's Rules,⁵ the attached Consent Decree **IS ADOPTED**.
5. **IT IS FURTHER ORDERED** that the forfeiture proceeding against Kermit L. Dilworth, Jr. **IS TERMINATED**.

¹47 C.F.R. § 95.426(a).

²See *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200532620001 (Enf. Bur., New Orleans Office, January 10, 2005) ("NAL").

³See 47 U.S.C. § 303(n).

⁴47 U.S.C. § 154(i).

⁵47 C.F.R. §§ 0.111, 0.311.

6. **IT IS FURTHER ORDERED** that copies of this Order shall be sent by regular first class mail and certified mail - return receipt requested, to Kermit L. Dilworth at his address of record.

FEDERAL COMMUNICATIONS COMMISSION

Kris Anne Monteith
Acting Chief, Enforcement Bureau

CONSENT DECREE**I. Introduction**

1. This Consent Decree is entered into by the Enforcement Bureau of the Federal Communications Commission and Kermit L. Dilworth, Jr.

II. Definitions

2. For the purposes of this Consent Decree, the following definitions shall apply:
- a) “Mr. Dilworth” refers to Kermit L. Dilworth, Jr.;
 - b) “Bureau” means the Enforcement Bureau of the Federal Communications Commission;
 - c) “Parties” means the Bureau and Mr. Dilworth;
 - d) “Commission” or “FCC” means the Federal Communications Commission;
 - e) “Station” means Mr. Dilworth’s Citizens Band radio station located at his address of record in Columbus, Mississippi;
 - f) “Act” means the Communications Act of 1934, as amended, 47 U.S.C. §§ 151 *et seq.*;
 - g) “Rules” means the Commission’s regulations set forth in Title 47 of the Code of Federal Regulations;
 - h) “Complaints” mean third-party complaints received by, or in the possession of, the Bureau as of February 5, 2003 regarding Mr. Dilworth’s operation of the Station;
 - i) “Investigation” means the investigation of the Station and the allegations contained in the Complaints, which resulted in the issuance of a Notice of Apparent Liability, NAL Account Number 200532620001;
 - j) “Order” means an order of the Enforcement Bureau adopting this Consent Decree;
 - k) “Final Order” means the status of the Order after the period for administrative and judicial review has lapsed;
 - l) “Effective Date” means the date on which the Bureau releases the Order; and
 - m) “New Orleans Field Office” means the Bureau’s office located at 2424 Edenborn Ave. Suite 460, Metairie, LA 70001.

III. Background

3. The Bureau received the Complaints alleging that Mr. Dilworth's Station was causing widespread interference to neighbors' home electronic equipment. Typically, such widespread interference indicates the use of unauthorized equipment or excessive power. The Bureau thereafter commenced the Investigation to inspect the Station and determine whether Mr. Dilworth's operation of the station was in accordance with the Rules. Subsequent to our investigation, Bureau agents requested Mr. Dilworth's permission to inspect the Station. Mr. Dilworth refused to allow Bureau agents to inspect the Station, which resulted in the issuance of a Notice of Apparent Liability, NAL Account Number 200532620001.

4. Mr. Dilworth has committed to complete the remedial measures and other undertakings contemplated by this Consent Decree.

IV. Agreement

5. Mr. Dilworth and the Bureau agree to be legally bound by the terms and conditions of this Consent Decree. The Bureau represents and warrants that its signatory is duly authorized to enter into this Consent Decree on its behalf. Mr. Dilworth agrees that the Bureau has jurisdiction over the matters contained in this Consent Decree.

6. The Parties agree that the provisions of this Consent Decree shall be subject to final approval by the Bureau by incorporation of such provisions by reference in an Order.

7. The Parties agree that this Consent Decree shall become effective on the Effective Date. Upon the Effective Date, the Order and this Consent Decree shall have the same force and effect as any other order of the Commission and any violation of the terms of this Consent Decree shall constitute a separate violation of a Commission order, entitling the Commission to exercise any rights and remedies attendant to the enforcement of a Commission order.

8. As part of the Order, the Bureau shall terminate the Investigation. From and after the Effective Date, the Bureau shall not, either on its own motion or in response to third-party objection, initiate any inquiries, investigations, forfeiture proceedings, hearings, or other sanctions or actions against Mr. Dilworth, based in whole or in part on (i) the Investigation or (ii) the Complaints. The Bureau agrees that, in the absence of material new evidence, it will not, on its own motion, initiate or recommend to the Commission, any new proceeding, formal or informal, regarding the matters discussed in paragraph 3, above, with regard to operation prior to the Effective Date. Nothing in this Consent Decree shall prevent the Bureau from instituting, or recommending to the Commission, new investigations or enforcement proceedings against Mr. Dilworth, in the event of any alleged future misconduct for violation of this Consent Decree or for violation of the Act or the Commission's Rules, consistent with the provisions of this Consent Decree.

9. Mr. Dilworth admits, solely for the purpose of this Consent Decree and for

Commission civil enforcement purposes, and in express reliance on the provisions of paragraph 8 hereof, that his refusal to allow Bureau agents to inspect the Station was in violation of the Rules. Notwithstanding any other provision of this Consent Decree, it is expressly agreed and understood that if this Consent Decree is breached by the Bureau, or is invalidated or modified to Mr. Dilworth's prejudice by the Commission or by any court, then the provisions of the immediately-preceding sentence shall be of no force or effect whatever, and Mr. Dilworth shall not, by virtue of that sentence or any other provision of this Consent Decree, be deemed to have made any admission concerning any Rule violations.

10. The Parties agree and acknowledge that this Consent Decree shall constitute a final settlement between them concerning the Bureau's Investigation of the matters discussed in paragraph 3, above.

11. In consideration of the Bureau's termination of its Investigation into these matters, Mr. Dilworth agrees to, within thirty (30) days of the Effective Date:

- a. Dismantle and remove the antenna for the Station from his address of record in Columbus, Mississippi;
- b. Provide evidence that demonstrates that the antenna has been dismantled to the New Orleans Field Office of the Bureau. Such evidence may be a photograph, a copy of a work order, or a statement from local law enforcement;
- c. Remove the Station transmitter and any ancillary amplifiers used at the Station from his address of record in Columbus, Mississippi. He may ship the equipment to the New Orleans Field Office of the Bureau. Alternatively, he may provide evidence to the New Orleans Field Office of the Bureau that the Station transmitter and any ancillary amplifiers have been destroyed. Such evidence may be a photograph of the destroyed equipment or a statement from local law enforcement that the equipment was destroyed; and
- d. Cease operation of the Station from his address of record in Columbus, Mississippi and not operate a Citizens Band radio station from his home for five years from the Effective Date.

12. Mr. Dilworth will make a voluntary contribution to the United States Treasury in the amount of Five Hundred Dollars (\$500), payable in installments in accordance with the schedule set forth on Table I, attached, which is incorporated herein and forms a part of this Consent Decree. Mr. Dilworth will make each installment of this contribution on a timely basis without further protest or recourse, by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the Acct. No. and FRN 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, Illinois 60661. Payment by wire transfer may be made to ABA

Number 071000013, receiving bank Bank One, and account number 1165259.

13. Mr. Dilworth agrees that he is required to comply with each individual condition of this Consent Decree. Each specific condition is a separate condition of the Consent Decree as approved. To the extent that Mr. Dilworth fails to satisfy any condition, in the absence of Commission alteration of the condition, he will be deemed noncompliant and may be subject to possible enforcement action, including, but not limited to, letters of admonishment, or forfeitures.

14. Mr. Dilworth waives any and all rights he may have to seek administrative or judicial reconsideration, review, appeal or stay, or to otherwise challenge or contest the validity of this Consent Decree and the Order, provided the Order adopts the Consent Decree without change, addition or modification.

15. Mr. Dilworth agrees to waive any claims he may otherwise have under the Equal Access to Justice Act, 5 U.S.C. § 504 and 47 C.F.R. § 1.1501 *et seq.*, relating to the matters discussed in this Consent Decree.

16. If any Party (or the United States on behalf of the FCC) brings a judicial action to enforce the terms of the Order, neither Mr. Dilworth nor the FCC shall contest the continuing validity of the Consent Decree or Order. Mr. Dilworth and the Commission further agree that they will waive any statutory right to a trial *de novo* with respect to any matter upon which the Order is based (provided in each case that the Order is limited to adopting the Consent Decree without change, addition, or modification), and that they will consent to a judgment incorporating the terms of this Consent Decree.

17. In the event that this Consent Decree is rendered invalid by any court of competent jurisdiction, this Consent Decree shall become null and void and may not be used in any manner in any legal proceeding.

18. This Consent Decree may be signed in counterparts and/or by telecopy and, when so executed, the counterparts, taken together, will constitute a legally binding and enforceable instrument whether executed by telecopy or by original signatures.

ENFORCEMENT BUREAU
FEDERAL COMMUNICATIONS COMMISSION

Kris Anne Monteith, Acting Chief

Date

Kermit L. Dilworth Jr.

Date

Table I
Payment Schedule

Date	Amount
April 15, 2005	\$60
May 15, 2005	\$40
June 15, 2005	\$40
July 15, 2005	\$40
August 15, 2005	\$40
September 15, 2005	\$40
October 15, 2005	\$40
November 15, 2005	\$40
December 15, 2005	\$40
January 15, 2006	\$40
February 15, 2006	\$40
March 15, 2006	\$40