

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

In the Matter of)	
)	
Jack Gerritsen)	File Number EB-03-LA-286
)	
Bell, California)	NAL/Acct. No. 200532900002
)	FRN 0005240072
)	

FORFEITURE ORDER

Adopted: November 30, 2005

Released: December 2, 2005

By the Regional Director, Western Region, Enforcement Bureau:

I. INTRODUCTION

1. In this *Forfeiture Order* (“*Order*”), we issue a monetary forfeiture in the amount of twenty-one thousand dollars (\$21,000) to Jack Gerritsen (“Gerritsen”), for willful and repeated violation of Section 333 of the Communications Act of 1934, as amended (“Act”).¹ On December 2, 2004, the Enforcement Bureau’s Los Angeles Office issued a *Notice of Apparent Liability for Forfeiture* (“NAL”) in the amount of \$21,000 to Gerritsen after determining that Gerritsen apparently willfully, repeatedly, and maliciously interfered with the radio communications of authorized users in the Amateur Radio Service. In this *Order*, we consider Gerritsen’s various arguments concerning his authority to operate, his ability to cause interference, and his inability to pay the forfeiture.

II. BACKGROUND

2. On November 14, 2001, the Commission’s Wireless Telecommunications Bureau (“WTB”) set aside, on its own motion, amateur radio station license KG6IRO, which was granted to Gerritsen on November 7, 2001.² 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.³

¹47 U.S.C. § 333.

²The 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).

³See November 21, 2001, letter from W. Riley Hollingsworth, Special Counsel, Enforcement Bureau, Federal Communications Commission, to Mr. Jack Gerritsen (“*Enforcement Bureau Letter*”). On December 28, 1999, 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. Gerritsen was convicted of interfering with police radio communications on June 6, 2000. Gerritsen’s subsequent probation included that he not possess any radio transmitting devices and not interfere with police or FCC activity. See Municipal Court of Long Beach Judicial District, County of Los Angeles, State of California, Case No. 0SE01792: People vs. Jack Gerritsen, June 6, 2000. On January 29, 2002, Officers from the Bell Police Department and the California Highway Patrol arrested Gerritsen for violation of his probation. See Bell Police Department-Supplemental/Arrest Report 01-6723, dated January 29, 2002. On May 7, 2002, Gerritsen was found to have violated his probation and sentenced. See 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, Affirmed in part, reversed in part, BR 042769, Los Angeles County Superior

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.”⁴ On January 30, 2002, WTB notified Gerritsen that his amateur application had been dismissed.⁵ Therefore, Gerritsen does not hold a valid amateur license and has no authority to operate.

3. Beginning in July 28, 2003, the Commission’s Los Angeles Office began receiving complaints of deliberate interference to radio communications over local Amateur, Business and Public Safety radio repeater systems.⁶ The complaints alleged that the person making the transmissions identified himself as “KG6IRO.” The Los Angeles Office conducted an investigation which identified Gerritsen as the source of the on-going unlicensed operation. Based upon this evidence, a Notice of Apparent Liability for \$10,000 was issued to Gerritsen on June 15, 2004, for willful and repeated unlicensed operation of a radio station in the Amateur Radio Service in violation of Section 301 of the Act (“*Section 301 NAL*”).⁷

4. On June 15, 2004, agents from the Los Angeles Office observed a signal on 146.405 MHz monopolizing the authorized 147.435/146.405 MHz repeater. Using mobile direction finding techniques, the agents located the source of the signal to Gerritsen’s residence at 6217 ½ Palm Avenue in Bell, California. For almost an hour, Gerritsen maintained a steady transmission on the input frequency of 146.405 MHz which kept all other operators from using the repeater.

5. On June 24, 2004, the Los Angeles Office received a complaint from an amateur operator which recounted a broadcast made that day, on the repeater’s output frequency, 147.435 MHz, by a man identifying himself as Jack Gerritsen, announcing a “hostile takeover” of the frequency. On July 16, 2004, the Los Angeles Office received a complaint alleging that Gerritsen was interfering with fire watch communications on the authorized 147.105/146.505 MHz repeater. In response, Los Angeles agents went to Gerritsen’s residence to investigate the complaint. Gerritsen admitted operating on the 147.105/146.505 MHz repeater to the agents. The agents warned Gerritsen that he did not have authority to transmit on any amateur band and told him to vacate all amateur frequencies.

6. On July 24, 2004, using mobile direction finding techniques, an agent from the Los Angeles Office positively identified radio transmissions emanating from Gerritsen’s residence as the source of radio signals being transmitted on another authorized amateur repeater, the 145.240/144.640 repeater. These communications consisted of a 20 minute prerecorded message by Gerritsen threatening to “jam” any operator that would “jam” him along with a recording of the tone used by the phone company to indicate a phone is off the hook. Throughout the recording, Gerritsen identified himself by the call sign “KG6IRO.” During Gerritsen’s transmissions, no other amateur operator was able to use the 145.240/144.640 repeater. On July 26, 2004, the Los Angeles Office received a complaint from yet another amateur operator stating that Gerritsen had played a recording for 48 minutes without interruption over the authorized “Keller Peak” repeater on 146.985/146.385 MHz.

7. On September 13, 2004, the Los Angeles Office received a complaint from an Amateur

Court, September 22, 2004.

⁴*Enforcement Bureau Letter.*

⁵*See Notice Of Dismissal, dated January 30, 2002 (“Dismissal Notice”).*

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

⁷47 U.S.C. § 301. A Forfeiture Order concerning the same violation was issued for \$10,000 on October 5, 2004. *Jack Gerritsen*, 19 FCC Rcd 19,520 (EB 2004), *petition for reconsideration denied* 20 FCC Rcd 4273 (EB 2005).

Relay Radio League (“ARRL”) Official Observer, alleging that Gerritsen deliberately and maliciously interfered with the Young Hams Net using the authorized Catalina Island Amateur Repeater Association (“CARA”) repeater on 147.090/147.690 MHz on September 8, 2004.⁸ The complaint alleged that the prerecorded messages transmitted by Gerritsen were so intense and vile they were reported to have reduced one of the younger participants to tears.

8. On September 15, 2004, using mobile direction finding techniques, an agent from the Los Angeles Office positively identified radio transmissions emanating from Gerritsen’s residence as the source of radio signals monopolizing the input frequency of 147.690 MHz for the CARA repeater on 147.090/147.690 MHz. The agent heard Gerritsen transmit prerecorded messages, and also sounds, static, and tones, as the members of the Young Hams Net attempted to communicate. During Gerritsen’s transmissions, which lasted for almost ten minutes, no other amateur operator was able to use the repeater.

9. On December 2, 2004, the Commission’s Los Angeles Office issued a *NAL* in the amount of \$21,000 to Gerritsen.⁹ In the *NAL* issued by the Los Angeles Office, the Office found that Gerritsen apparently willfully, repeatedly, and maliciously caused interference to authorized users in the Amateur Radio Service on June 15, 2004, July 24, 2004 and September 15, 2004.¹⁰ Gerritsen filed a response to the *NAL* on December 17, 2004 (“*Response*”). In his *Response*, Gerritsen “denies those activities alleged against [him] that if true would be illegal.” Gerritsen argues that his amateur license has not been suspended, terminated, revoked, modified or set aside; that no record of his license set aside exists; that he did not engage in interference; that the actual motive behind the *NAL* is to silence his messages in violation of the U.S. Constitution; and that he does not have sufficient income to pay the forfeiture amount proposed in the *NAL*.¹¹

III. DISCUSSION

10. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Act,¹² Section 1.80 of the Rules,¹³ and *The Commission’s Forfeiture Policy Statement and*

⁸The Young Hams Net is directed by a 15 year old high school student and comprised of young people between the ages of seven and twenty.

⁹*Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200532900002 (Enf. Bur., Western Region, Los Angeles Office, released December 2, 2004). The Los Angeles Office found, based on the criteria in Section 503(b)(2)(D) of the Act, and the upward adjustment criteria in the Forfeiture Policy Statement, that an upward adjustment of the base forfeiture amount of \$7,000 was warranted because Gerritsen’s willful, repeated, and malicious interference with the radio communications of licensed amateur stations was egregious. The Los Angeles Office found that Gerritsen knowingly operated, without a license, radio transmission equipment while announcing his intentions to interfere with licensed amateur operators, and that he willfully and maliciously interfered with the transmissions of licensed amateurs on a repeated basis, disregarding the Commission’s requirement that amateur stations be licensed and operated according to good amateur practice.

¹⁰While the *NAL* details complaints alleging Gerritsen caused interference on multiple occasions, the Los Angeles Office found that Gerritsen caused interference on June 15, 2004, July 24, 2004 and September 15, 2004.

¹¹Gerritsen also argues that his criminal case, Municipal Court of Long Beach Judicial District, County of Los Angeles, State of California, Case No. 0SE01792: People vs. Jack Gerritsen, was reversed by the Los Angeles County Superior Court. In fact, only the order of the trial court on November 22, 2002, which revoked Gerritsen’s probation and lifted the stay on his previously imposed jail sentence was reversed. Gerritsen’s underlying conviction was not reversed. See n. 3, *supra*.

¹²47 U.S.C. § 503(b).

¹³47 C.F.R. § 1.80.

*Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines.*¹⁴ 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.¹⁵

11. Section 333 of the Act states that no person shall willfully or maliciously interfere with, or cause interference to, any radio communications of any station licensed or authorized by or under this Act or operated by the United States Government. The legislative history for Section 333 identifies willful and malicious interference as "intentional jamming, deliberate transmission on top of the transmissions of authorized users already using specific frequencies in order to obstruct their communications, repeated interruptions, and the use and transmission of whistles, tapes, records, or other types of noisemaking devices to interfere with the communications or radio signals of other stations."¹⁶ One hallmark of willful and malicious interference in the amateur radio service is the refusal by an operator to allow any other operator to talk.¹⁷ This can occur when an operator increases power so as to "capture" a repeater, to the exclusion of any other operators.¹⁸ It can also occur when an operator transmits on an amateur frequency slightly different than another amateur frequency but at equal strength. This results in an audible tone, or whistle, with a frequency equal to the difference in the frequencies of the two competing signals. This tone is often referred to as "heterodyne" interference.¹⁹

12. We first address Gerritsen's argument that his amateur license was not set aside and that no record of the set aside exists. In fact, Gerritsen received an official notice from the Commission informing him that his license was set aside and that his application was returned to pending status.²⁰ He also received an official notice from the Commission when his pending application was dismissed.²¹ The Commission received notice that Gerritsen received each piece of correspondence.²² Consequently, we find this argument to be without merit.²³

13. Next we address Gerritsen's arguments concerning the three instances of interference that

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

¹⁵47 U.S.C. § 503(b)(2)(D).

¹⁶H.R. Rep. No. 101-316, at 13 (1989). Section 97.101(a) of the Commission's Rules ("Rules") states that "each amateur station must be operated in accordance with good engineering and good amateur practice." 47 C.F.R. § 97.101(a). Section 97.101(d) of the Rules states that "[n]o amateur operator shall willfully or maliciously interfere with or cause interference to any radio communication or signal." 47 C.F.R. § 97.101(d).

¹⁷*U.S. v. Richard*, (1998 WL 830654 (E.D. La.)). See also *John B. Genovese*, 10 FCC Rcd 7594 (CIB 1995).

¹⁸The "capture effect" occurs when the repeater, or any FM receiver, responds to only the strongest signal received on a frequency and rejects any weaker competing signals. See *Unlicensed Operation in the TV Broadcast Bands*, 19 FCC Rcd 10018, 10036 (2004).

¹⁹9 kHz Channel Spacing for AM Broadcasting, 88 FCC 2d 290, ¶ 69, (1981).

²⁰See *Enforcement Bureau Letter*, *supra*.

²¹See *Dismissal Notice*, *supra*.

²²Gerritsen signed the "Return Receipt Requested" postal card when he received the *Enforcement Bureau Letter*. He also sent a reply to WTB when he received the *Dismissal Notice*.

²³Gerritsen also demands that certain complaints and documents described in the *NAL* be made available to him. We note that such requests are governed by the Commission's procedures concerning Freedom of Information Act ("FOIA") requests. These procedures are found in Sections 0.441 – 0.470 of the Rules. 47 C.F.R. §§ 0.441 – 0.470.

he caused on June 15, 2004, July 24, 2004 and September 15, 2004. On June 15, 2004, Los Angeles agents, using direction finding techniques, located the source of a signal on 146.405 MHz, monopolizing the 146.405 MHz input frequency to the 146.435/146.405 repeater, to Gerritsen's residence. While Gerritsen argues that his location is too distant and too insignificant in power to prevent other operators from using the repeater, he acknowledges that he "may have keyed [his] transmitter continuously in a 'duplex' mode of operation that allows [him] to hear 'feed back' when [his] signal goes thru (sic) the repeater, so [he] can then pick up the microphone and utter a few words before being jammed by another operator" In other words, Gerritsen acknowledges his efforts to monopolize the 146.435/146.405 repeater.

14. On July 24, 2004, Los Angeles agents, using direction finding techniques, located the source of a signal on the 145.240/144.640 repeater to Gerritsen's residence. Because Gerritsen effectively captured the 145.240/144.640 repeater during that time, and because of his intentional jamming, no authorized amateur operator was able to use the repeater. Gerritsen makes no statement, and offers no evidence, to refute this allegation.²⁴

15. On September 15, 2004, using mobile direction finding techniques, an agent from the Los Angeles Office determined that radio transmissions emanating from Gerritsen's residence captured the CARA repeater and transmitted on top of the Young Hams Net that was attempting to use the repeater at that time. In addition, Gerritsen apparently caused interference to occur, using the CARA repeater, and prohibited any communications to occur on the repeater at that time. Gerritsen argues that even if such interference took place, it is not evidence that other amateurs were unable to use the repeater because his signal was not the strongest signal reaching the CARA antenna. However, in describing the CARA repeater, Gerritsen also states that "the fact that my signal overrides or covers a signal out of a repeater, should be no cause for your *NAL*, as my signal often is a response to the fact that a repeater is turned on and becomes available for use" Gerritsen also states that he has increased by tenfold the power of the transmitter that he uses so that other operators can no longer override his signal.

16. In each of the three instances cited in the *NAL*, Los Angeles agents used direction finding equipment to locate the source of the interfering signal to Gerritsen's residence. In each instance, a Los Angeles agent monitored the signal being transmitted and heard the interference caused by Gerritsen. Gerritsen produced no evidence to refute the agents' findings.²⁵ He also described in detail his ability to cause the interference on the days cited in the *NAL*. Consequently, we find Gerritsen's arguments that he did not cause the interference described on the three days cited in the *NAL* to be without merit.²⁶

17. We now consider Gerritsen's claim that the content of his communications and transmissions are protected by the First Amendment of the U.S. Constitution.²⁷ The content of Gerritsen's

²⁴Gerritsen does argue that his transmissions on this date are protected by the U.S. Constitution. We address that argument in ¶ 17, below.

²⁵In response to a Notice of Apparent Liability, the "respondent will be afforded a reasonable period of time (usually 30 days from the date of the notice) to show, in writing, why a forfeiture penalty should not be imposed or should be reduced, or to pay the forfeiture. Any showing as to why the forfeiture should not be imposed or should be reduced shall include a detailed factual statement and such documentation and affidavits as may be pertinent." Section 1.80(f)(3) of the Rules. 47 C.F.R. § 1.80(f)(3).

²⁶Gerritsen also raises arguments concerning other alleged instances of interference that are described in the *NAL*, beyond those that occurred on June 15, 2004, July 24, 2004 and September 15, 2004. Because the Los Angeles Office found that Gerritsen apparently caused interference only on June 15, 2004, July 24, 2004 and September 15, 2004, we do not reach Gerritsen's arguments concerning the other instances described in the *NAL*.

²⁷We note that some types of communications by amateur operators using amateur frequencies are prohibited by the Commission's Rules. Section 97.113(a) of the Rules, 47 C.F.R. § 97.113, prohibits amateur stations from transmitting:

transmissions are not at issue here, and, therefore, the forfeiture does not impair Gerritsen's First Amendment rights. As described above, willful and malicious interference includes intentional jamming, deliberate transmission on top of the transmissions of authorized users already using specific frequencies in order to obstruct their communications, repeated interruptions, and the use and transmission of whistles, tapes, records, or other types of noisemaking devices. Gerritsen's acts of transmitting obstructed the communications of licensed amateur operators by capturing the repeaters and monopolizing them, and by overriding and transmitting on top of the transmissions of the licensed operators. Gerritsen's actions violated Section 333 because his transmissions, regardless of their content, caused interference to licensed amateur operators.²⁸ Therefore, we find this argument to be without merit as well.

18. Finally, we address Gerritsen's claim that he is unable to pay the proposed forfeiture. Specifically, Gerritsen states that he did not file any tax returns for the most recent three year period because his income was insufficient to require a tax return. We note that in the *NAL*, the Los Angeles Office instructed Gerritsen, if he sought cancellation or reduction of the forfeiture, to supply:

(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. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.²⁹

Gerritsen submitted no documentation that reflects his current financial status. Therefore, he has provided us with no basis to support cancellation or reduction of the forfeiture based on his inability to pay.³⁰

19. We have examined Gerritsen'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 Gerritsen willfully and repeatedly violated Section 333 of the Act. Considering the entire record and the factors listed above, we find that neither reduction or cancellation of the proposed \$21,000 forfeiture is warranted

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- (1) Communications specifically prohibited elsewhere in this Part;
 - (2) Communications for hire or for material compensation, direct or indirect, paid or promised, except as otherwise provided in these rules;
 - (3) Communications in which the station licensee or control operator has a pecuniary interest, including communications on behalf of an employer. Amateur operators may, however, notify other amateur operators of the availability for sale or trade of apparatus normally used in an amateur station, provided that such activity is not conducted on a regular basis;
 - (4) Music using a phone emission except as specifically provided elsewhere in this Section; communications intended to facilitate a criminal act; messages in codes or ciphers intended to obscure the meaning thereof, except as otherwise provided herein; obscene or indecent words or language; or false or deceptive messages, signals or identification;
 - (5) Communications, on a regular basis, which could reasonably be furnished alternatively through other radio services.

47 C.F.R. § 97.113(a).

²⁸We also note that Gerritsen, in each instance, caused interference to licensed amateur operators while he held no valid amateur license. His unlicensed operation on amateur frequencies is not protected by the U.S. Constitution as it is well established that the right to free speech does not include the right to use radio facilities without a license and that the licensing system established by Congress in the Communications Act was a proper exercise of Congress' power over commerce. *National Broadcasting Company v. U.S.*, 319 U.S. 190, 227 (1943).

²⁹*NAL* at ¶ 21.

³⁰See *Webnet Communications, Inc.*, 18 FCC Rcd 6870, 6878 ¶ 16 (2003).

IV. ORDERING CLAUSES

20. **ACCORDINGLY, IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended (“Act”), and Sections 0.111, 0.311 and 1.80(f)(4) of the Commission’s Rules, Jack Gerritsen **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of \$21,000 for willfully and repeatedly violating Section 333 of the Act.³¹

21. 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.³² 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 Federal Communications Commission, P.O. Box 358340, Pittsburgh, PA 15251-8340. Payment by overnight mail may be sent to Mellon Bank /LB 358340, 500 Ross Street, Room 1540670, Pittsburgh, PA 15251. Payment by wire transfer may be made to ABA Number 043000261, receiving bank Mellon Bank, and account number 911- 6106. Requests for full payment under an installment plan should be sent to: Associate Managing Director – Financial Operations, Room 1A625, 445 12th Street, S.W., Washington, D.C. 20554.³³

22. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by First Class Mail and Certified Mail Return Receipt Requested to Jack Gerritsen at his address of record.

FEDERAL COMMUNICATIONS COMMISSION

Rebecca L. Dorch
Regional Director, Western Region
Enforcement Bureau

³¹47 U.S.C. §§ 333, 503(b), 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4).

³²47 U.S.C. § 504(a).

³³See 47 C.F.R. § 1.1914.