

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

In the Matter of)	
)	
Jack Gerritsen)	File Number EB-04-LA-292
)	
Bell, California)	NAL/Acct. No. 200532900006
)	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 violation of Sections 321(b) and 333 of the Communications Act of 1934, as amended (“Act”).¹ On January 21, 2005, 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 willfully and maliciously interfered with the radio communications of a Coast Guard Auxiliary Officer while the Auxiliary Officer attempted to use the amateur frequencies to contact a sailing vessel in distress. In this *Order*, we consider Gerritsen’s arguments concerning his authority to operate, his allegation that there was no emergency, his denial that he caused the interference, and his inability to pay.

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 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.”³ On January 30, 2002, WTB notified Gerritsen that his amateur application had been dismissed.⁴ Therefore, Gerritsen did not hold a valid amateur license and had no authority to operate.

3. On July 16, 2004, Gerritsen was again warned by agents from the Commission’s Los Angeles Office that he did not have authority to transmit on any amateur band and that he should vacate

¹47 U.S.C. §§ 321(b), 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*”).

⁴See Notice Of Dismissal, dated January 30, 2002 (“*Dismissal Notice*”).

all amateur frequencies. On October 29, 2004, at 11:25 a.m., the Commission's Los Angeles Office received a telephone call from a complainant stating that she had not been able to contact her husband on the sailing vessel ("S/V") *Elke-Marie* traveling from California to Guadalupe Island, Mexico. According to the complainant, the S/V *Elke-Marie* had been traveling with a companion vessel, the S/V *Drummond*, and both had encountered a storm on the evening of October 25, 2004. The storm had damaged the S/V *Elke-Marie*, rendering the ship's VHF marine radio inoperable. The amateur radio was the only operational transmitter aboard the vessel as the S/V *Elke-Marie* turned around and sailed back towards Catalina Island. The complainant stated that when she contacted Coast Guard Los Angeles Group to report she had not heard from her husband in two days, the U.S. Coast Guard Operations Center contacted a U.S. Coast Guard Auxiliary Officer and requested that he attempt to contact the complainant's husband via amateur radio, to determine his need for assistance. Information received from the Coast Guard Auxiliary Officer ("Auxiliary Officer") indicated that, beginning at about 10:00 a.m. on October 29, 2004, the Auxiliary Officer came up on the Catalina Island Amateur Repeater Association ("CARA") repeater on Catalina Island, California, transmitting on 147.090/147.690 MHz, and requested that all stations stand by while he attempted to contact the S/V *Elke-Marie* on behalf of the Coast Guard.⁵ Shortly thereafter, according to the Auxiliary Officer and the complainant, Gerritsen began speaking and transmitting a prerecorded message using the CARA repeater. Throughout the transmissions, Gerritsen repeatedly announced his cancelled amateur call sign of "KG6IRO." The Auxiliary Officer announced that the channel was being used for emergency traffic. According to the Auxiliary Officer, each time he attempted to contact the S/V *Elke-Marie*, Gerritsen played a recording or questioned the validity of the emergency. When asked by the Auxiliary Officer to stand down, Gerritsen stated that he did not believe there was a real emergency and continued to transmit his messages. The Auxiliary Officer stated to Gerritsen there was a real emergency only to be rebuffed by Gerritsen who accused the Auxiliary Officer of declaring a sham emergency in an attempt to "jam" his messages. Gerritsen continued transmitting for approximately 40 minutes, repeatedly playing a taped recording and ultimately ending his transmission by stating "If you jam me, I'll jam you."

4. On October 29, 2004 at approximately 11:35 a.m., Los Angeles Office agents approached Gerritsen's residence at 6217 1/2 Palm Avenue, Bell, California. The agents located the source of a signal on 147.690 MHz, the input frequency to the CARA repeater, to Gerritsen's residence. After several failed attempts to have Gerritsen answer the door, one of the agents called Gerritsen's residential telephone using his cellular telephone. The call was answered by someone in the residence who would not speak. The Los Angeles agent then requested a face to face interview with Gerritsen. Shortly thereafter the phone line went dead. Subsequent attempts to reach Gerritsen over the phone resulted in busy signals.

5. On October 29, 2004, at approximately 4:38 p.m., Los Angeles agents returned to Gerritsen's residence. Using mobile direction finding techniques, the agents located the source of a signal on 147.8117 MHz, which identified as "KG6IRO," using a different amateur repeater, to Gerritsen's residence at 6217 1/2 Palm Avenue, Bell, California. As the agents approached the front door to Gerritsen's residence they heard a male voice coming from inside the residence which synchronized with the voice heard on the agents' handheld scanner tuned to 147.810 MHz. The voice was familiar to the agents as Gerritsen's voice. No one answered the door. The agents called out loudly to Gerritsen through the door and requested information concerning Gerritsen's involvement in a Coast Guard rescue earlier that day. The agents also requested an inspection and an interview. There was no response to the requests.

6. On November 3, 2004, the Commission's Los Angeles Office received information from the President of CARA, who reported that he had monitored and recorded the communications between Gerritsen and the Coast Guard Auxiliary Officer on October 29, 2004. The recording reveals that for approximately 40 minutes, Gerritsen is speaking and playing a recorded message while the Auxiliary

⁵During the emergency communications, the Auxiliary Officer identified himself as "W1HIJ" and "U.S. Coast Guard Auxiliary Upland Radio One." The complainant identified herself as "N6LNX." According to Commission records, both are authorized amateur licensees.

Officer and the complainant urge him to cease transmissions and vacate the frequency because of the emergency.

7. On January 21, 2005, the Commission's Los Angeles Office issued a *NAL* in the amount of \$21,000 to Gerritsen.⁶ In the *NAL*, the Los Angeles Office found that Gerritsen apparently willfully and maliciously caused interference to the radio communications of the Coast Guard Auxiliary Officer, who was attempting to communicate with a ship in distress. Gerritsen filed a response to the *NAL* on February 16, 2005 ("*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 emergency existed; that he did not transmit for approximately 40 minutes;⁷ that he did not jam or interfere with any emergency communication; and that he does not have sufficient income to pay the forfeiture amount proposed in the *NAL*.⁸

III. DISCUSSION

8. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Act,⁹ Section 1.80 of the Rules,¹⁰ and *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*.¹¹ 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.¹²

9. 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

⁶*Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200532900006 (Enf. Bur., Western Region, Los Angeles Office, released January 21, 2005). Based on the criteria in Section 503(b)(2)(D) of the Act, and the upward adjustment criteria in the Forfeiture Policy Statement, the Los Angeles Office found that an upward adjustment of the base forfeiture amount of \$7,000 was warranted. The Los Angeles Office determined that Gerritsen's apparent willful and malicious interference with the radio communications of the Coast Guard Auxiliary Officer, who was attempting to communicate with a ship in distress, was egregious. Specifically, the Los Angeles Office determined that Gerritsen knowingly operated, without a license, radio transmission equipment and, on October 29, 2004, his unauthorized operations interfered with emergency communications related to aiding a ship in distress as Gerritsen continued to transmit on a frequency that had been cleared for emergency communications, despite repeated warnings and requests to vacate the frequency.

⁷Gerritsen also denies that his phone line went dead when he was called by the Los Angeles agent because when he is unable to answer the phone, an answering machine does so. We note that, as detailed above, someone in the house did pick up the phone when the agent called initially on October 29, 2004. It was only after that person refused to respond to the agent's request for an interview with Gerritsen that the phone line went dead.

⁸Gerritsen also incorporates, by reference, his responses to other *NAL*'s issued against him. To the extent those responses are relevant, we consider them in this *Order*.

⁹47 U.S.C. § 503(b).

¹⁰47 C.F.R. § 1.80.

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

¹²47 U.S.C. § 503(b)(2)(D).

types of noisemaking devices to interfere with the communications or radio signals of other stations.”¹³ 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.¹⁴

10. Section 321(b) of the Act states that “[a]ll radio stations, including Government stations and stations on board foreign vessels when within the territorial waters of the United States, shall give absolute priority to radio communications or signals relating to ships in distress; shall cease all sending on frequencies which will interfere with hearing a radio communication or signal of distress, and, except when engaged in answering or aiding the ship in distress, shall refrain from sending any radio communications or signals until there is assurance that no interference will be caused with the radio communications or signals relating thereto, and shall assist the vessel in distress, so far as possible, by complying with its instructions.”¹⁵

11. We first address Gerritsen’s argument that his amateur license was not set aside. As explained above, Gerritsen’s amateur radio license KG6IRO was set aside by the Commission on November 14, 2001. His amateur license application was then dismissed on January 30, 2002. Gerritsen does not hold a valid amateur license. Gerritsen has been warned in writing by Commission staff and in person, by Los Angeles agents, that he has no authorization to use the amateur radio frequencies.¹⁶ Therefore, this argument has no merit.

12. Next, we consider Gerritsen’s argument that no emergency existed. Gerritsen puts forth various allegations that there was no emergency; that there was no rescue; that the complainant could not have known that the *S/V Elke-Marie*’s VHF Marine radio was inoperable unless she had been in contact with the ship; that the *S/V Elke-Marie* was not actually in distress;¹⁷ that the *S/V Elke-Marie* and the Coast Guard Auxiliary Officer did not have to use a particular radio frequency; that there was no need for assistance; that he could have given the same assistance the Auxiliary Officer gave; and that there are specific radio frequencies for emergencies to be used by amateurs and the Coast Guard. We find all of these arguments to be irrelevant. The requirement put forth by Congress in Section 321 is not subjective, nor is it open to debate. Section 321 clearly requires all radio stations to give absolute priority to radio communications or signals relating to ships in distress and to cease all sending on frequencies which will interfere with hearing a radio communication or signal in distress, except when engaged in answering or aiding the ship in distress.¹⁸ Additionally, radio stations shall refrain from sending any radio communications or signals until there is assurance that no interference will be caused with the radio communications or signals relating to the ship on distress.¹⁹

13. While there is no requirement in Section 321 that the Coast Guard make the determination that a ship is in distress, we find that a Coast Guard Auxiliary Officer is uniquely qualified to make such a determination. On October 29, 2004, such a determination was made and the Auxiliary

¹³H.R. Rep. No. 101-316, at 13 (1989).

¹⁴*U.S. v. Richard*, (1998 WL 830654 (E.D. La.)). See also *John B. Genovese*, 10 FCC Rcd 7594 (CIB 1995).

¹⁵47 U.S.C. § 321(b).

¹⁶See *Enforcement Bureau Letter, Dismissal Notice, supra*.

¹⁷Gerritsen also states that the only communications that he heard were the Auxiliary Officer’s announcement “which was not interfered with or interrupted,” according to Gerritsen, and a report of a precise longitudinal and latitudinal location.

¹⁸See, e.g., *Establishment of Policies and Services Rules for the Mobile Satellite Service in the 2 GHz Band*, 14 FCC Rcd 4843, 4885 (1999).

¹⁹47 U.S.C. § 321(b).

Officer attempted to clear 147.090/147.690 MHz to aid a ship in distress near Catalina Island. Upon receiving the complaint on October 29, 2004, Los Angeles agents immediately located the source of a signal on 147.690 MHz, the input frequency of the CARA repeater, to Gerritsen's residence. A review of the recording of the incident made by the President of the CARA shows Gerritsen transmitting on the repeater for approximately 40 minutes, refusing to give priority to communications relating to the ship in distress.²⁰ The recording also shows that Gerritsen made no attempt to aid or to communicate assistance to the ship in distress, the Auxiliary Officer, or the complainant.

14. Gerritsen denies that he interfered with any emergency communication or refused to allow any other operator to talk during the emergency described above. However, other than his denial, Gerritsen supplies no evidence to refute the allegations.²¹ Gerritsen admits transmitting on the CARA repeater on October 29, 2004.²² He also admits hearing transmissions from the Auxiliary Officer.²³ The Los Angeles Office's evidence, including the recording from the CARA president, shows that Gerritsen failed to clear the channel and continued to transmit. The evidence also shows that Gerritsen repeatedly interrupted the transmissions of the Auxiliary Officer, as the Officer tried to clear the channel and make contact with the ship in distress. Given the context of the communications, these interruptions constituted willful and malicious interference under Section 333.

15. 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.²⁴

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.²⁵

16. 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 violated Sections 321(b) and 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

²⁰Gerritsen demands that a copy of this recording 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.

²¹In 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).

²²Gerritsen admits that he was on the CARA repeater prior to 11:00 a.m. on October 29, 2004, although he states that it was for less than 10 minutes.

²³See n. 17, *supra*.

²⁴*NAL* at ¶ 17.

²⁵See *Webnet Communications, Inc.*, 18 FCC Rcd 6870, 6878 ¶ 16 (2003).

warranted

IV. ORDERING CLAUSES

17. **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 violating Sections 321(b) and 333 of the Act.²⁶

18. 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.²⁷ 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. 20554.²⁸

19. **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

²⁶47 U.S.C. §§ 321, 333, 503(b), 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4).

²⁷47 U.S.C. § 504(a).

²⁸See 47 C.F.R. § 1.1914.