

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

In the Matter of)	
)	
Gene A. Fricke)	EB-04-BS-085
)	
Nashua, New Hampshire)	NAL/Acct. No. 200632260001
)	
)	FRN No. 0014204622

ORDER

Adopted: July 6, 2006

Released: July 10, 2006

By the Assistant Chief, Enforcement Bureau:

1. The Enforcement Bureau (the "Bureau") has been investigating whether Gene A. Fricke, the owner/operator of a Citizens Band ("CB") radio station in Nashua, New Hampshire, has violated Section 301 of the Communications Act of 1934, as amended ("Act"),¹ by operating a CB radio station without Commission authorization.

2. The Bureau and Mr. Fricke 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,² and the authority delegated by sections 0.111 and 0.311 of the Commission's Rules,³ the attached Consent Decree **IS ADOPTED**.

5. **IT IS FURTHER ORDERED** that the forfeiture proceeding against Gene A. Fricke **IS TERMINATED**.

¹ 47 U.S.C. § 301.

² 47 U.S.C. § 154(i).

³ 47 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 Gene A. Fricke at his address of record.

FEDERAL COMMUNICATIONS COMMISSION

George R. Dillon
Assistant Chief, Enforcement Bureau

CONSENT DECREE**I. Introduction**

1. This Consent Decree is entered into by the Enforcement Bureau of the Federal Communications Commission and Gene A. Fricke.

II. Definitions

2. For the purposes of this Consent Decree, the following definitions shall apply:
- a) “Mr. Fricke” refers to Gene A. Fricke;
 - b) “Bureau” means the Enforcement Bureau of the Federal Communications Commission;
 - c) “Parties” means the Bureau and Mr. Fricke;
 - d) “Commission” or “FCC” means the Federal Communications Commission;
 - e) “Station” means Mr. Fricke’s Citizens Band radio station located at his address of record in Nashua, New Hampshire;
 - 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 January 25, 2006 regarding Mr. Fricke’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 200632260001;
 - 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) “Boston Office” means the Bureau’s Field Office located at 1 Batterymarch Park, Quincy, MA 02169.

III. Background

3. The Bureau received the Complaints alleging that Mr. Fricke’s operation of his Station was interfering with other CB operators in the Nashua, New Hampshire area. The Bureau thereafter commenced the Investigation to inspect the Station and determine whether Mr. Fricke’s operation of the station was in accordance with the Rules. During the Investigation, Bureau agents found that, using modified CB equipment, Mr. Fricke operated his CB station on a frequency not authorized for use by a

CB station and transmitted a one-way communication in the form of a constant carrier, thereby voiding his blanket authorization to operate a CB station. On January 26, 2006, the Boston Office released a Notice of Apparent Liability for Forfeiture in the amount of \$10,000 for apparent willful violation of Section 301 of the Act for operating a CB station without a license.

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

IV. Agreement

5. Mr. Fricke 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. Fricke 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. Fricke, 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. Fricke, 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. Fricke 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 the operation of his CB station at the time of the Investigation 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. Fricke'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. Fricke 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. Fricke agrees to, upon the Effective Date:

- a) Cease operating on CB Channel 19 for a period of one year;
- b) Limit the length of his communications under Section 95.416(a) (CB Rule 16) of the Commission's rules, 47 C.F.R. § 95.416(a), to no more than forty-five seconds per transmission;
- c) Limit his communications with other CB stations to no more than five consecutive minutes, as set forth in Section 95.416(b), 47 C.F.R. § 95.416(b);
- d) Cease transmitting one-way communications as proscribed under Section 95.413(a)(4) (CB Rule 13), 47 C.F.R. § 95.413(a)(4);
- e) Operate his CB station with only certified CB equipment at an output power of no more than four watts; and
- f) Ensure that his broadcast transmissions do not advertise or solicit the sale of any goods or services, as prohibited in Section 95.413(a)(5), 47 C.F.R. § 95.413(a)(5).

12. Mr. Fricke 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. Fricke 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 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.

13. Mr. Fricke 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. Fricke 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. Fricke 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. Fricke 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. Fricke nor the FCC shall contest the continuing validity of the Consent

Decree or Order. Mr. Fricke 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

George R. Dillon, Assistant Bureau Chief

Date

Gene A. Fricke

Date

Table I
Payment Schedule

Date	Amount
August 1, 2006	\$20
September 1, 2006	\$20
October 1, 2006	\$20
November 1, 2006	\$20
December 1, 2006	\$20
January 1, 2007	\$20
February 1, 2007	\$20
March 1, 2007	\$20
April 1, 2007	\$20
May 1, 2007	\$20
June 1, 2007	\$20
July 1, 2007	\$20
August 1, 2007	\$20
September 1, 2007	\$20
October 1, 2007	\$20
November 1, 2007	\$20
December 1, 2007	\$20
January 1, 2008	\$20
February 1, 2008	\$20
March 1, 2008	\$20
April 1, 2008	\$20
May 1, 2008	\$20
June 1, 2008	\$20
July 1, 2008	\$20
August 1, 2008	\$20