

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

In the Matter of)
Anderson Desk Company) File Number: EB-05-SD-031
San Diego, California) NAL/Acct. No.: 200532940002
) FRN: 0009980855

FORFEITURE ORDER

Adopted: August 23, 2006

Released: August 25, 2006

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 ten thousand dollars (\$10,000) to Anderson Desk Company ("Anderson") for willful and repeated violation of Section 301 of the Communications Act of 1934, as amended ("Act").¹ On September 28, 2005, the Enforcement Bureau's San Diego Office issued a *Notice of Apparent Liability for Forfeiture* ("NAL") in the amount of \$10,000 to Anderson after determining that Anderson apparently willfully and repeatedly operated an unlicensed microwave radio station on microwave channels 21225.0 MHz and 22461.25 MHz² in San Diego, California. In this *Order*, we consider Anderson's argument that Commission staff had assured "similarly situated" microwave operators, and Anderson, by association, that the Commission would not take enforcement action against them.

II. BACKGROUND

2. On February 4, 2005, an agent from the Commission's San Diego Office was investigating allegations that companies in the Otay Mesa area of San Diego were using unauthorized microwave radio stations to communicate with sister companies across the U.S. – Mexico border in Tijuana, Mexico. The agent monitored and measured the transmissions of a microwave radio station operated at an office occupied by Anderson Desk Company, a manufacturer of office furniture, at 7510 Airway Road, San Diego, California. The frequency measurement of this microwave radio station was 21224.0 MHz.

3. A review of the Commission's database revealed that Anderson had no authorization to operate a point-to-point microwave radio station. However, a pending application, filed by Anderson on September 23, 2004, for frequency 22461.25 MHz at the 7510 Airway Road location was found.³

¹ 47 U.S.C. § 301.

² 47 C.F.R. § 101.147(s).

³ See File No. 0000281783. Pursuant to Sections 101.31(b)(1) and 101.31(b)(1)(v) of the Rules, 47 C.F.R. §§ 101.31(b)(1), 101.31(b)(1)(v), certain applicants for point-to-point microwave stations, not located within 56.3 kilometers of any international border, operating in certain frequency bands, are deemed to have conditional authority to operate their proposed stations during the pendency of their applications. The frequency proposed for use by Anderson Desk in its application is not contained in these frequency bands. Also, Anderson Desk's proposed station is located approximately 1.5 km from the Mexican border.

4. The San Diego agent returned to the Anderson office on February 9, 2005, and again made measurements showing that the microwave radio station was operating on the microwave channel 21225.0 MHz.⁴ An inspection was attempted, but no one was available to make the station available for inspection at that time.

5. On February 28, 2005, the San Diego agent returned to the Anderson office and again measured the microwave radio station operating on microwave channel 21225.0 MHz. At this time the agent conducted an inspection of the radio station with an Anderson staff member. The agent requested a copy of Anderson's station authorization for its microwave radio station, but only a copy of the September 23, 2004, pending application could be found at the Anderson office.

6. On March 11, 2005, the San Diego Office sent a Letter of Inquiry ("LOI") to Anderson concerning its operation on an unauthorized frequency of 21224.0 MHz, in violation of Section 301 of the Act.⁵ The San Diego Office received a reply to the LOI on March 23, 2005. In its reply, Anderson stated that this radio station was used for internal business communications between Anderson's U.S and Mexican facilities. Anderson acknowledged that it began operating this microwave radio station in 2000 on frequency 22461.25 MHz and had replaced some defective equipment in December 2004. At that time, frequency 21224.0 MHz was installed. Anderson further stated that the repaired unit was back in service and that "the operation frequency is 22461.25." Anderson also acknowledged that its pending application for authority to operate on 22461.25 MHz had not yet been granted.

7. On May 20, 2005, Anderson's pending application was granted under the call sign of WQCT534 for frequency 22461.25 MHz. However, the licensed geographical coordinates for WQCT534 did not match the coordinates of the actual transmitter location of 7510 Airway Road, San Diego, California. The difference between the two locations is approximately 3.95 km.

8. On September 28, 2005, the San Diego Office issued a *NAL* in the amount of \$10,000 to Anderson.⁶ In the *NAL*, the San Diego Office found that Anderson apparently willfully and repeatedly violated Section 301 of the Act by operating an unlicensed microwave radio station on microwave channels 21225.0 MHz and 22461.25 MHz⁷ in San Diego, California. The San Diego Office also required Anderson to file a report concerning Anderson's efforts to bring its microwave radio station into compliance with the terms of its authorization for station WQCT534. Specifically, Anderson was required to detail how it had relocated its transmitter to the coordinates specified in the station authorization, or how it had amended its authorization to accurately reflect the location of the transmitter.

9. Anderson filed a response to the *NAL* on October 28, 2005 ("Response"). In this *Response*, Anderson argues that "similarly situated" microwave operators had been assured by staff from the Commission's International Bureau, in 2001, that the International Bureau would no longer grant special temporary authority ("STA") to cross border microwave operators, such as Anderson, but that no enforcement action would be taken against these operators either. Anderson argues that its operations in 2005, which are the basis of the San Diego Office's *NAL*, were done in reliance on this advice and therefore the proposed forfeiture should be cancelled. Anderson attaches affidavits from its counsel and consulting engineer detailing what they were told by International Bureau staff in 2001. Anderson, however, does not attach the report required by the San Diego Office concerning the location of its

⁴ The actual measurement made by the agent showed that the station was operating on 21224.0 MHz.

⁵ 21224.0 MHz is within the maximum allowable tolerance of microwave channel 21225.0 MHz. See 47 C.F.R. § 101.147(s).

⁶ *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200532940002 (Enf. Bur., Western Region, San Diego Office, released September 28, 2005).

⁷ 47 C.F.R. § 101.147(s).

transmitter. Review of the Commission's records reveals that Anderson filed an application to modify the WQCT534 license by amending the coordinates of the transmitter location.⁸

III. DISCUSSION

10. 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 the *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

11. Section 301 of the Act requires 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.¹³ On February 4, 2005, February 9, 2005, and February 28, 2005, measurements made by a San Diego agent revealed that Anderson was operating a microwave radio station on the frequency 21224.0 MHz. A review of Commission records indicated that Anderson had no authorization to operate on 21224.0 MHz. The review also indicated that Anderson had a pending application, but no authorization, to operate on 22461.25 MHz. On March 23, 2005, Anderson acknowledged operating a microwave station on the frequencies of 22461.25 MHz and 21224.0 MHz since 2000. Anderson also acknowledged that it had no license, only a pending application, to operate such a station.

12. In its *Response*, Anderson does not claim that it held a valid authorization to operate its microwave station during the 2005 time period detailed in the *NAL*. Indeed, Anderson does not deny operating repeatedly without a license. Anderson also does not discuss its September 23, 2004 application, or why it was filed. Instead, Anderson argues that it should not be liable for a forfeiture because it was relying on oral advice given to its counsel by Commission staff in 2001, concerning other similarly situated microwave operators.

13. The Commission has consistently held that applicants are responsible for compliance with the Commission's Rules and that they should not rely on informal oral opinions from Commission staff.¹⁴ However, assuming *arguendo* that Commission staff did advise Anderson's counsel that there would be no further enforcement actions initiated by field offices regarding unlicensed cross-border 23 GHz systems in 2001, we agree with the San Diego Office's determination that Anderson's continued reliance on this advice in 2005 was misplaced. In fact, in its *Response*, Anderson acknowledges that in 2005, cross-border coordination and licensing by both the FCC and the Mexican Ministry of Communications and Transport ("SCT") was occurring. Indeed, Anderson filed an application for authority to operate in 2004. Therefore, Anderson clearly understood that licensing was both required, and available, for its cross-border operations in 2005, the time period during which the San Diego Office

⁸ See File No. 0002448658, filed January 17, 2006. This application is still pending.

⁹ 47 U.S.C. § 503(b).

¹⁰ 47 C.F.R. § 1.80.

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

¹² 47 U.S.C. § 503(b)(2)(D).

¹³ 47 U.S.C. § 301.

¹⁴ *Texas Media Group, Inc.* 5 FCC Rcd 2851, 2852 (1990) *aff'd sub nom. Malkan FM Associates v. FCC*, 935 F.2d 1313 (D.C. Cir. 1991).

agent observed and questioned Anderson's unauthorized operations. Therefore, we find no merit to their argument.

14. We have examined the *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 Anderson willfully and repeatedly violated Section 301 of the Act. Considering the entire record and the factors listed above, we find that neither reduction nor cancellation of the proposed \$10,000 forfeiture is warranted. Additionally, because Anderson has failed to respond to the San Diego Office's report requirement, we direct Anderson, to file, within ten (10) days of the date of this *Order*, a report with the District Director of the San Diego Office concerning Anderson's efforts to bring its microwave radio station into compliance with the terms of its authorization for station WQCT534. Specifically, Anderson must detail how it has relocated its transmitter to the coordinates specified in the station authorization, or how it has amended its authorization to accurately reflect the location of the transmitter. If Anderson fails to comply with this directive, we may begin forfeiture proceedings against Anderson for failing to comply with a Commission order.¹⁵

IV. ORDERING CLAUSES

15. **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, Anderson Desk Company **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of \$10,000 for willfully and repeatedly violating Section 301 of the Act.¹⁶

16. **IT IS FURTHER ORDERED** that Anderson Desk Company **SHALL FILE**, within ten (10) days of the release of this Notice, a report with the District Director, San Diego Office, concerning Anderson Desk Company's efforts to come into compliance with the authorization for station WQCT534, as detailed above.

17. 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.¹⁷ 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. 20554.¹⁸

¹⁵ See, e.g., *BigZoo.com*, 20 FCC Rcd 3954 (EB 2005).

¹⁶ 47 U.S.C. §§ 301, 503(b), 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4).

¹⁷ 47 U.S.C. § 504(a).

¹⁸ See 47 C.F.R. § 1.1914.

18. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by First Class Mail and Certified Mail Return Receipt Requested to Anderson Desk Company, at its address of record, and its counsel of record, Frederick J. Day, Esquire.

FEDERAL COMMUNICATIONS COMMISSION

Rebecca L. Dorch
Regional Director, Western Region
Enforcement Bureau