

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

In the Matter of )

Lamkin Corporation )  
Licensee of WQBQ706 )  
San Diego, California )

File Number: EB-05-SD-004

NAL/Acct. No.: 200532940007

FRN: 0010769438

**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 four thousand dollars (\$4,000) to Lamkin Corporation (“Lamkin”), for willful and repeated violation of Section 1.903(a) of the Commission’s Rules (“Rules”).<sup>1</sup> On September 28, 2005, the Enforcement Bureau’s San Diego Office issued a *Notice of Apparent Liability for Forfeiture* (“NAL”) in the amount of \$4,000 to Lamkin after determining that Lamkin apparently willfully and repeatedly operated microwave radio transmitting equipment on an unauthorized microwave channel of 21245.0 MHz<sup>2</sup> in San Diego, California. In this *Order*, we consider Lamkin’s argument that Lamkin did not willfully or repeatedly operate in violation of the Rules.

**II. BACKGROUND**

2. On January 11, 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 Lamkin Corporation, a manufacture of golf club grips, at 6530 Gateway Park Drive, San Diego, California. The frequency measurement showed that this microwave radio station was operating on microwave channel 21245.0 MHz.<sup>3</sup>

3. The agent returned to the Lamkin office on February 4, 2005, and again measured the frequency of microwave radio station. The measurement showed that the station was operating on microwave channel 21245.0 MHz, the same as the January 11, 2005 measurement. A review of the Commission’s database revealed that Lamkin has authorization to operate a Private Fixed Point-to-Point Microwave radio station under license WQBQ706 at the 6530 Gateway Park Drive location. However, the authorized frequency for this microwave radio station is 22475.25 MHz.

4. On February 28, 2005, the agent returned to the Lamkin office and again found that microwave radio station WQBQ706 was operating on microwave channel 21245.0 MHz. At this time the agent conducted an inspection of the radio station with the Lamkin’s office manager. The office manager

<sup>1</sup> 47 C.F.R. § 1.903(a).

<sup>2</sup> See 47 C.F.R. § 101.147(s).

<sup>3</sup> The actual measurement taken by the agent showed that the station was operating on 21243.5 MHz.

provided the agent a copy of FCC authorization for WQBQ706 which indicated an authorized frequency of 22475.25 MHz for the station.

5. On March 11, 2005, the San Diego Office sent a Letter of Inquiry (“LOI”) to Lamkin concerning its unauthorized operation on 21243.5 MHz, in violation of Section 1.903(a) of the Commission’s Rules.<sup>4</sup> The San Diego Office received a reply to the LOI on March 24, 2005. The reply stated that this radio station was used for Lamkin’s internal business communications between their U.S and Mexican facilities. Lamkin stated that the receiver and transmitter frequencies of the microwave radio station had been installed backwards and that the improper operation had begun in September of 2003. The reply indicated that the proper receiver and transmitter frequencies had been installed and that the station was operating on the proper frequency. A San Diego agent confirmed that WQBQ706 was operating on frequency 22475.25 MHz later that day.

6. On September 28, 2005, the San Diego Office issued a *NAL* in the amount of \$4,000 to Lamkin.<sup>5</sup> In the *NAL*, the San Diego Office found that Lamkin apparently willfully and repeatedly operated microwave radio transmitting equipment on an unauthorized microwave channel of 21245.0 MHz<sup>6</sup> in San Diego, California. Lamkin filed a response to the *NAL* on October 28, 2005 (“*Response*”). In its *Response*, Lamkin argues that it did not commit a “willful” violation of the Rules, as defined by the Communications Act of 1934, as amended (“Act”), and, therefore, the *NAL* should be cancelled.<sup>7</sup> Lamkin also argues that it did not knowingly cause the transmissions to be repeated. Finally, Lamkin asserts that it corrected the error as soon as it was notified by the San Diego Office.

### III. DISCUSSION

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

8. Section 1.903(a) of the Rules requires that stations in the Wireless Radio Services must be used and operated only in accordance with the rules applicable to their particular service, and with a valid authorization granted by the Commission. On January 11, 2005, February 4, 2005, and February 28,

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<sup>4</sup> 21243.5 MHz is within the maximum allowable tolerance of microwave channel 21245.0 MHz. See 47 C.F.R. § 101.147(s).

<sup>5</sup> *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200532940007 (Enf. Bur., Western Region, San Diego Office, released September 28, 2005).

<sup>6</sup> See 47 C.F.R. § 101.147(s).

<sup>7</sup> In its *Response*, Lamkin incorrectly states that the *NAL* found Lamkin in violation of Section 301 of the Act. As stated above, and in the *NAL*, the violation concerned Section 1.903 of the Rules. We will treat Lamkin’s argument concerning Section 301 of the Act as if it concerns Section 1.903 of the Rules, in our consideration of Lamkin’s *Response*.

<sup>8</sup> 47 U.S.C. § 503(b).

<sup>9</sup> 47 C.F.R. § 1.80.

<sup>10</sup> 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999).

<sup>11</sup> 47 U.S.C. § 503(b)(2)(D).

2005, San Diego agents determined that Lamkin was operating a microwave radio station, WQBQ706, on the unauthorized microwave channel of 21245.0 MHz. Further, Lamkin admitted to the San Diego Office that its microwave radio station had been operating on the wrong frequency ever since it was first installed in 2003.

9. In its *Response*, Lamkin acknowledges that it operated its microwave station WQBQ706 on 21245.0 MHz. However, Lamkin argues that it did not willfully violate Section 1.903(a) because Section 312(f)(1) of the Act defines “willful” as the “conscious and deliberate commission or omission of [any] act . . . .”<sup>12</sup> Lamkin states that it “did not know” and “did not plan in advance to operate” on microwave channel 21245.0 MHz.<sup>13</sup> Lamkin further states, and supports with an affidavit from its radio service company, that the manufacturer of the equipment mislabeled the equipment to show the frequency of 22475.25 MHz on the equipment, but programmed the equipment to transmit on the reciprocal frequency, for this cross-border operation, of 21245.0 MHz. Lamkin argues that it therefore did not consciously or deliberately operate its microwave station on 21245.0 MHz.

10. The Commission has long held that licensees are responsible for the acts and omissions of their employees and independent contractors and has “consistently refused to excuse licensees from forfeiture penalties where actions of employees or independent contractors have resulted in violations.”<sup>14</sup> In this case, Lamkin consciously and deliberately operated WQBQ706. Lamkin apparently relied on its radio service company to ensure the station operated within the parameters of the WQBQ706 authorization. Lamkin’s radio service company, after contracting with the equipment company for the manufacture of the WQBQ706 transmitting equipment, failed for almost two years to discover the unauthorized frequency being used by the WQBQ706 transmitter. Therefore, Lamkin operated WQBQ706 on an unauthorized frequency for almost two years until being notified by the San Diego Office. A licensee is required to operate on the frequency stated in its authorization,<sup>15</sup> and while Lamkin apparently relied on its radio service company to ensure its compliance with the WQBQ706 authorization, we are compelled to treat the error by Lamkin’s radio service company as an error by Lamkin itself. Therefore, we find that Lamkin’s violation was willful. However, even if we were to find that Lamkin’s violation was not willful, its liability would not be decreased, as we find that its violation was repeated.

11. Lamkin argues that its transmissions on 21245.0 MHz were done without its knowledge and that if these transmissions were repeated or continuous, such operation cannot be attributed to Lamkin. We disagree. Section 312(f)(2) of the Act defines “repeated” as “the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day.”<sup>16</sup> In this case, the evidence is clear, and Lamkin admits, that its operation of WQBQ706 on 21245.0 MHz occurred for more than one day. Therefore, we find no merit to this argument.

12. Finally, Lamkin asserts that it took prompt action to correct its mistake concerning its operations on 21245.0 MHz. As the San Diego Office stated in the *NAL*, the Commission has consistently held that a licensee is expected to correct errors when they are brought to the licensee’s attention and that such correction is not grounds for a downward adjustment in the forfeiture.<sup>17</sup>

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<sup>12</sup> 47 U.S.C. § 312(f)(1).

<sup>13</sup> *Response* at 3.

<sup>14</sup> *Eure Family Limited Partnership*, 17 FCC Rcd 21861, 21863 – 21864 (2002) (quoting *Triad Broadcasting Company, Inc.*, 96 FCC 2d 1235, 1244 (1984)).

<sup>15</sup> *Dominic DeNaples*, 19 FCC Rcd 12303 (EB 2004).

<sup>16</sup> 47 U.S.C. § 312(f)(2).

<sup>17</sup> *AT&T Wireless Services, Inc.* 17 FCC Rcd 21866, 21871-76 (2002).

13. 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 Lamkin willfully and repeatedly violated Section 1.903(a) of the Rules. Considering the entire record and the factors listed above, we find that neither reduction nor cancellation of the proposed \$4,000 forfeiture is warranted.

#### IV. ORDERING CLAUSES

14. **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, Lamkin Corporation **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of \$4,000 for willfully and repeatedly violating Section 1.903(a) of the Rules.<sup>18</sup>

15. 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.<sup>19</sup> 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.<sup>20</sup>

16. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by First Class Mail and Certified Mail Return Receipt Requested to Lamkin Corporation, 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

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<sup>18</sup> 47 U.S.C. § 503(b), 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4), 1.903(a).

<sup>19</sup> 47 U.S.C. § 504(a).

<sup>20</sup> See 47 C.F.R. § 1.1914.