

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

In the Matter of)	
)	
Joni K. Craig)	File Number: EB-04-SD-163
)	
San Diego, California)	NAL/Acct. No.: 200632940002
)	FRN: 0014413157

FORFEITURE ORDER

Adopted: September 27, 2006

Released: September 29, 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 five hundred dollars (\$500) to Joni K. Craig (“*Craig*”), for willful and repeated violations of Section 301 of the Communications Act of 1934, as amended (“*Act*”).¹ On December 19, 2005, the San Diego Office issued a *Notice of Apparent Liability for Forfeiture* (“*NAL*”) in the amount of \$10,000 to Craig after determining that Craig apparently willfully and repeatedly operated an unlicensed radio transmitter on 106.9 MHz in San Diego, California. In this *Order*, we consider Craig’s arguments that she played only a passive role in the operation of the unlicensed station, that she took steps to shut down the station, and that she is unable to pay the proposed forfeiture.

II. BACKGROUND

2. On July 26, 2005, agents from the Commission’s San Diego Office monitored 106.9 MHz in the San Diego area and used mobile direction finding techniques to locate broadcast transmissions on 106.9 MHz emanating from a converted garage behind Craig’s residence in the City Heights area of San Diego. The agents took field strength measurements and determined that the signals being broadcast exceeded the limits for operation under Part 15 of the Commission’s Rules (“*Rules*”) and therefore required a license.² According to FCC records, neither Craig, nor any other person or entity, holds an authorization to broadcast on that frequency from that location.

3. San Diego agents had previously interviewed Craig about the unlicensed radio station in her garage. On October 4, 2004, the agents used mobile direction finding techniques to locate broadcast transmissions on 106.9 MHz emanating from Craig’s residence. The agents noted that the source of the radio signal was an antenna atop a detached garage in the rear of the residence. The agents took field strength measurements and determined that the signals being broadcast exceeded the limits for operation under Part 15 and therefore required a license.³ When agents attempted to inspect the radio station in her garage, Craig refused to allow the inspection. She claimed to have no knowledge of a radio station and

¹ 47 U.S.C. § 301.

² Section 15.239 of the Rules provides that non-licensed broadcasting in the 88-108 MHz band is permitted only if the field strength of the transmission does not exceed 250 µV/m at three meters. The measurements made on July 26, 2005, indicated that the signal was 1,916 times greater than the maximum permissible level for a non-licensed Part 15 transmitter.

³ On October 4, 2004, the measurements indicated that the signal was 1,986 times greater than the maximum permissible level for non-licensed Part 15 transmitters.

that some other people were working on a project in her garage. The agents departed after orally warning Craig not to operate an unlicensed radio station. On October 5, 2004, the San Diego Office sent Craig a detailed Notice of Unlicensed Operation, which gave Craig an opportunity to reply.⁴ No reply was received.

4. On November 10, 2004, San Diego agents monitored 106.9 MHz in the San Diego, California area and used mobile direction finding techniques to locate broadcast transmissions on 106.9 MHz emanating from Craig's garage. The agents took field strength measurements and determined that the signals being broadcast exceeded the limits for operation under Part 15 of the Rules and therefore required a license.⁵ The agents then approached the residence and identified themselves to Craig. The agents again requested an inspection. Craig agreed to the inspection, unlocked the garage, and gave the agents access to its contents, which included a radio transmitter, a computer and an internet modem, all in operation. The electricity for the operation came off the main power line to the garage. The current then ran from the garage to Craig's residence, via underground cables. The radio station's power switch was visible and easily accessible. The agents requested that Craig shut down the unlicensed radio station, but she again refused, explaining that she could shut down the station but would not as it belonged to someone else. She told the agents that she would have the people who owned the equipment shut down the transmitter. When she was asked who the owner of the radio equipment was, she refused to answer. The agents left the premises after verbally warning Craig again not to continue to operate an unlicensed radio station. Despite the warnings, subsequent monitoring by San Diego agents, on November 16, 2004, and November 19, 2004, revealed that the station continued to operate from Craig's garage.⁶

5. After finding that the station was still active on July 26, 2005, San Diego agents, on August 2, 2005,⁷ hand-delivered another Notice of Unlicensed Operation to Craig, which again gave Craig an opportunity to reply. The agents advised Craig that if the unlicensed radio operation did not cease immediately, she could receive a NAL and may be found liable for forfeiture in the amount of ten thousand dollars. A copy of the Notice sent via Certified Mail and regular mail was posted later that day as well.⁸ No reply from Craig was received.

6. On August 3, 2005, San Diego agents monitored 106.9 MHz in the San Diego, California area and found no station active. On August 26, 2005, San Diego agents monitored 106.9 MHz in the San Diego, California area and used mobile direction finding techniques to locate broadcast transmissions on 106.9 MHz emanating from Craig's garage. The agents took field strength measurements and determined that the signals being broadcast exceeded the limits for operation under Part 15 of the Rules and therefore

⁴ The San Diego Office received a receipt from the U.S. Postal Service indicating that the Notice of Unlicensed Operation had been received.

⁵ The measurements made on November 10, 2004, indicated that the signal was 2,422 times greater than the maximum permissible level for a non-licensed Part 15 transmitter.

⁶ The measurements made on November 16, 2004, indicated that the signal was 5,473 times greater than the maximum permissible level for a non-licensed Part 15 transmitter. The measurements made on November 19, 2004, indicated that the signal was 5,357 times greater than the maximum permissible level for a non-licensed Part 15 transmitter.

⁷ Prior to the delivery on August 2, 2005, of the oral and written warnings, the agents took field strength measurements and determined that the signal being broadcast was 2,167 times greater than the maximum permissible level for a non-licensed Part 15 transmitter.

⁸ The San Diego Office received a receipt from the U.S. Postal Service indicating that the Notice of Unlicensed Operation had been received.

required a license.⁹ No inspection of the station was attempted.

7. On December 19, 2005, the San Diego Office issued a *NAL* in the amount of \$10,000 to Craig.¹⁰ Craig filed a response to the *NAL* on January 19, 2006 (“*Response*”). In the *NAL*, the San Diego Office found that Craig apparently willfully and repeatedly violated Section 301 of the Act by operating an unlicensed radio transmitter on 106.9 MHz in San Diego, California. In her *Response*, Craig argues that she played only a passive role in the operation of the station, that she took steps to shut the station down after receiving the July 26, 2005, Notice of Unlicensed Operation from the San Diego Office, and that the station no longer broadcasts from her residence. She also argues that she is unable to pay the proposed forfeiture and, to support this claim, supplies three years of tax records. Finally, if a forfeiture is imposed, Craig asks for a personal interview and/or a hearing with a Commission official at the nearest field office to discuss the *NAL*.

III. DISCUSSION

8. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Act,¹¹ Section 1.80 of the Rules,¹² and *The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087 (1997), recon. denied, 15 FCC Rcd 303 (1999) (“*Forfeiture Policy Statement*”). In examining Craig’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.¹³

9. Section 301 of the Act requires that no person shall use or operate any apparatus for the transmission of energy of communications or signals by radio within the United States except under and in accordance with the Act and with a license. Section 3(33) of the Act defines “communications by radio” as “the transmission by radio of writing, signs, signals, pictures, and sounds of all kinds, including all instrumentalities, facilities, apparatus, and services (among other thing the receipt, forwarding, and delivery of communications) incidental to such transmission.”¹⁴ On October 4, 2004, November 10, 2004, November 16, 2004, November 19, 2004, July 26, 2005, August 2, 2005 and August 26, 2005, Craig provided services and facilities incidental to the transmission of communications by radio occurring on 106.9 MHz in San Diego, California.¹⁵

10. In her *Response*, Craig argues that her participation in the unlicensed broadcast station was merely a passive role, that the station belonged to other individuals, and that she did not feel it was

⁹ The measurements made on August 26, 2005, indicated that the signal was 4,571 times greater than the maximum permissible level for a non-licensed Part 15 transmitter.

¹⁰ *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200632940002 (Enf. Bur., Western Region, San Diego Office, released December 19, 2005).

¹¹ 47 U.S.C. § 503(b).

¹² 47 C.F.R. § 1.80.

¹³ 47 U.S.C. § 503(b)(2)(D).

¹⁴ 47 U.S.C. § 153(33).

¹⁵ Under Section 503(b)(6) of the Act, 47 U.S.C. §503(b)(6), we may only propose forfeitures to non-licensees for apparent violations that occurred within one year of the date of the *NAL*. However, Section 503(b) does not bar us from assessing whether Craig’s conduct prior to that time period apparently violated the Act, in determining the appropriate forfeiture amount for those violations that occurred within the one-year statute of limitations. *Inphonic, Inc.*, 20 FCC Rcd 13277, 13286 (2005).

her place to shut it down. We find that these facts do not make Craig any less of a participant in the operation of the station. As the San Diego Office determined in the *NAL*, Craig provided the garage and real property on which the operation took place, and provided the electric current used to power the radio station. Consequently, we find that she participated in the operation of the unlicensed station.¹⁶ Craig also acknowledged to San Diego agents that she was aware that the station was operating on her property, apparently, with her permission. While Craig admitted that she could turn the station off, evidencing her control over the station, she refused to do so. Craig provided access to the garage that housed the station, also demonstrating her control over the station. The Commission has said in the past that “‘control’ will be defined to include . . . any means of actual working control over the operation of the [station] in whatever manner exercised.”¹⁷ Additionally, we have previously held that because Section 301 of the Act provides that “no person shall use or operate”¹⁸ radio transmission equipment, liability for unlicensed operation may be assigned to any individual taking part in the operation of the unlicensed station, regardless of who else may be responsible for the operation.¹⁹ Taken together, we find that Craig’s actions amounted to willful and repeated violations of Section 301 of the Act.

11. Craig also argues that she made efforts to have the station shut down after receiving the July 26, 2005, Notice of Unlicensed Operation from the San Diego Office and that the station no longer operates from her residence. Whatever efforts Craig made to shut down the station in July 2005, were apparently unsuccessful given that the San Diego Office found the station to be in operation on August 2, 2005 and August 26, 2005, as detailed in the *NAL*. Additionally, the Commission expects violators to implement corrective action to bring past violations into compliance, and that, therefore, such actions do not nullify or mitigate past violations.²⁰ Therefore, we find no merit to this argument.

12. Further, Craig asks that the proposed forfeiture amount be reduced or cancelled because she is unable to pay the forfeiture amount. She also supplies three years of tax records to support his claim that he is unable to pay the proposed forfeiture amount. Having reviewed Craig’s response along with the supporting financial documentation we conclude, consistent with precedent, that a reduction of the proposed forfeiture to \$500 is appropriate.²¹

13. Finally, Craig states that if a forfeiture is assessed against her, she asks for an interview or hearing with a Commission official at the nearest field office. Nothing in the Act requires the Commission to provide an unlicensed operator the opportunity for a hearing prior to imposition of a forfeiture.²² Rather, under Section 503(b)(4) of the Act, the Commission must issue a written notice of apparent liability which specifies each provision of the Act and the rules alleged to be violated, the facts upon which the charge against the named violator is based, and the date upon which the alleged violation

¹⁶ Section 3(35) of the Act defines “radio station” as a “station equipped to engage in radio communication or radio transmission of energy.” 47 U.S.C. § 153(35).

¹⁷ *Revision of Rules and Policies for the Direct Broadcast Satellite Service*, 11 FCC Rcd 9712, 9747 (1995). *Petition for Review Denied by DIRECTV, Inc. v. FCC*, 110 F.3d 816 (D.C. Cir. 1997).

¹⁸ 47 U.S.C. § 301.

¹⁹ *Jean L. Senatus*, 20 FCC Rcd 14418 (EB 2005).

²⁰ See *AT&T Wireless Services, Inc.*, 17 FCC Rcd 21866, 21875-76 (2002), *Seawest Yacht Brokers*, 9 FCC Rcd 6099, 6099 (1994).

²¹ See, e.g., *Ronald E. Sauer*, 19 FCC Rcd 14884 (EB 2004); *Kornwell Chan*, 16 FCC Rcd 14893 (EB 2001).

²² *Octavio Sarmiento, Jr.* 17 FCC Rcd 25277, 25279 (EB 2002). Section 504(a) of the Act provides that any suit brought by the United States in federal district court for the collection of a forfeiture imposed pursuant to the Act shall be a trial *de novo*. 47 U.S.C. § 504(a).

occurred.²³ The *NAL* issued by the San Diego Office fully complied with these requirements.

14. We have examined Craig'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 Craig willfully and repeatedly violated Section 301 of the Act. Considering the entire record and the factors listed above, we find that reduction of the proposed forfeiture is warranted, given Craig's demonstrated inability to pay. Accordingly, the forfeiture amount is reduced from ten thousand dollars (\$10,000) to five hundred dollars (\$500).

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, Joni K. Craig **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of \$500 for willfully and repeatedly violating Section 301 of the Act.²⁴

16. 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.²⁵ 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. 20554.²⁶

17. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by First Class Mail and Certified Mail Return Receipt Requested to Joni K. Craig at her address of record, and Jeremy D. Warren, her counsel of record.

FEDERAL COMMUNICATIONS COMMISSION

Rebecca L. Dorch
Regional Director, Western Region
Enforcement Bureau

²³ 47 U.S.C. § 503(b)(4). *See also* Section 1.80(f) of the Rules, 47 C.F.R. § 1.80(f); and Section 1.80(g) of the Rules, which states that procedures for hearings "will ordinarily be followed only when a hearing is being held for some reason other than the assessment of a forfeiture" 47 C.F.R. § 1.80(g). *See Arcom Communications*, 20 FCC Rcd 20061 (EB 2005), *affirmed* DA 06-1536, 2006 WL 2310791 (rel. August 9, 2006).

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

²⁵ 47 U.S.C. § 504(a).

²⁶ *See* 47 C.F.R. § 1.1914.