

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

In the Matter of)	
)	
Robert A. Spiry)	File No.: EB-02-ST-045
)	NAL/Acct. No. 200332980002
Tacoma, WA)	FRN 0007939218

MEMORANDUM OPINION AND ORDER

Adopted: January 24, 2007**Released: January 26, 2007**

By the Assistant Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this *Memorandum Opinion and Order* (“*Order*”), we grant to the extent indicated herein, the petition for reconsideration filed by Robert A. Spiry (“Mr. Spiry”). Mr. Spiry seeks reconsideration of the *Forfeiture Order*¹ in which the Assistant Chief, Enforcement Bureau, found him liable for a monetary forfeiture in the amount of \$10,000 for willful and repeated violation of Section 301 of the Communications Act of 1934, as amended (“*Act*”).² The noted violation involves Mr. Spiry’s operation of a radio station without Commission authorization. For the reasons discussed below, we reduce the forfeiture amount from \$10,000 to \$1,500.

II. BACKGROUND

2. On multiple occasions,³ agents from the Commission's Seattle, Washington Field Office (“Seattle Office”) working in the Tacoma, Washington area as a result of interference complaints, determined, using direction-finding equipment and techniques, that the interference resulted from excessively high powered CB transmissions originating from Mr. Spiry's residence and from his mobile unit in his vehicle. During inspections conducted on April 2, 2002 and November 5, 2002, Seattle Office agents determined that Mr. Spiry was operating transmitters that were not FCC certified in violation of Section 95.409 of the Commission’s Rules (“*Rules*”),⁴ and that Mr. Spiry was operating with a linear amplifier attached to his CB radio transmitter in violation of Section 95.411 of the Rules.⁵ During both inspections, Mr. Spiry was advised that his use of unauthorized and non-certified equipment voided his blanket authority to operate his CB station. Additionally, on each occasion, the agents issued a Notice of Unlicensed Operation to Mr. Spiry to further inform him that the unauthorized operation would be considered unlicensed operation in violation of Section 301 of the Act.

¹ *Robert A. Spiry*, Forfeiture Order, 19 FCC Rcd 19891 (Enf. Bur. 2004) (“*Forfeiture Order*”).

² 47 U.S.C. § 301.

³ March 13, 2002; April 2, 2002; October 29, 2002; November 5, 2002.

⁴ 47 C.F.R. § 95.409.

⁵ 47 C.F.R. § 95.411.

3. On December 30, 2002, the District Director of the Seattle Office issued Mr. Spiry a *Notice of Apparent Liability for Forfeiture* ("NAL") in the amount of \$10,000 for apparent willful and repeated violation of Section 301 of the Act.⁶ In his January 15, 2003 response, Mr. Spiry admitted that he caused the offending interference as set forth in the NAL. Mr. Spiry stated that he had ceased CB radio transmissions, had obtained an amateur radio license, and was unable to pay the forfeiture proposed in the NAL. The Assistant Chief of the Enforcement Bureau issued a *Forfeiture Order* on October 18, 2004, rejecting Mr. Spiry's arguments and affirming the forfeiture proposed by the NAL. On November 16, 2004, Mr. Spiry sought reconsideration of the *Forfeiture Order*. Therein, Mr. Spiry claimed that there are no more interference complaints; he received only one notice for unauthorized operation; and, Commission agents acted improperly in discussing whether to reduce the forfeiture in return for his turning in his amateur license. He further stated that he does not have the ability to pay the \$10,000 forfeiture penalty assessed. In support of his inability to pay claim, Mr. Spiry has submitted copies of tax returns covering a five year period.

III. DISCUSSION

4. Mr. Spiry's statement that there are no more complaints of interference does not mitigate his violation. As set forth in paragraph 6 of the *Forfeiture Order*, remedial efforts taken to comply with our rules after the violation are not grounds for reducing or canceling a violation.⁷ Further, while Mr. Spiry claimed he received only one Notice of Unlicensed Operation, the record reflects that he actually was issued two, only one of which he signed. Moreover, the Notices only supplemented the repeated oral warnings by the Seattle Office agents during their April 2, 2002 and November 5, 2002 inspections. Additionally, contrary to Mr. Spiry's claim, there was no impropriety in the agents discussing his case and considering possible rescission or surrender of his amateur license, because of his unauthorized CB operation in violation of Section 301. It is well established that a violation in one service can impact on other licenses that an individual may have.⁸ In summary, the dispositive fact is that Mr. Spiry was determined to be in willful and repeated violation of Section 301 of the Act. Accordingly, the \$10,000 forfeiture is consistent with the Commission's policy and precedent.⁹

5. As to his inability to pay claim, Mr. Spiry has demonstrated an inability to pay the \$10,000 forfeiture. Therefore, a reduction of the forfeiture amount from \$10,000 to \$1,500 is appropriate.

IV. ORDERING CLAUSES

6. Accordingly, **IT IS ORDERED** that, pursuant to Section 405 of the Act and Section 1.106 of the Rules, Mr. Spiry's petition for reconsideration **IS GRANTED** to the extent set forth above.

7. **IT IS FURTHER ORDERED** that, pursuant to Section 503(b) of the Act,¹⁰ and Sections 0.111, 0.311 and 1.80(f)(4) of the Commission's Rules,¹¹ Mr. Spiry **IS LIABLE FOR A MONETARY**

⁶ *Robert A. Spiry*, Notice of Apparent Liability for Forfeiture, NAL/Acct. No. 200332980002 (Enf. Bur., Seattle Office, released December 30, 2002).

⁷ *Seawest Yacht Brokers*, Forfeiture Order, 9 FCC Rcd 6099, 6099 (1994).

⁸ See *William Rogers*, Memorandum Opinion and Order, 92 FCC 2d 187 (1982) (Commission has authority to suspend an operator's license upon proof sufficient to satisfy the Commission that the licensee violated any provision of the Act.)

⁹ See *Pembroke Square Associates*, Forfeiture Order, 20 FCC Rcd 10585 (Enf. Bur. 2005); *Cumulus Licensing Corp.* Forfeiture Order, 19 FCC Rcd 24,815 (Enf. Bur. 2004); *Aquila, Inc.*, Forfeiture Order, 19 FCC Rcd 22,507 (Enf. Bur. 2004).

¹⁰ 47 U.S.C. § 503(b).

FORFEITURE in the amount of one thousand five hundred dollars (\$1,500) for willful and repeated violation of Section 301 of the Act.

8. 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.¹² Payment may be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Acct. No. referenced above. Payment by check or money order may be mailed to Forfeiture Collection Section, Finance Branch, 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, 445 12th Street, SW, Room 1-A625, Washington, D.C. 20554.¹³

9. **IT IS FURTHER ORDERED THAT** this *Order* shall be sent by regular mail and by certified mail, return receipt requested, to Mr. Robert A. Spiry to his address of record.

FEDERAL COMMUNICATIONS COMMISSION

George R. Dillon
Assistant Chief, Enforcement Bureau

¹¹ 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4).

¹² 47 U.S.C. § 504(a).

¹³ See 47 C.F.R. § 1.1914.