

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

In the Matter of)	
)	File No. EB-03-PO-128
David Michael Oaks)	
)	NAL/Acct. No. 200432920002
Unlicensed FM Radio Station)	
Beaverton, Oregon)	FRN: 0010288587
)	

MEMORANDUM OPINION AND ORDER

Adopted: January 25, 2007

Released: January 29, 2007

By the Assistant Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this *Memorandum Opinion and Order* (“*Order*”), we dismiss the Petition for Reconsideration filed by Mr. David Michael Oaks, (“Mr. Oaks”). Mr. Oaks seeks reconsideration of the *Forfeiture Order*¹ in which the Enforcement Bureau (“Bureau”) found him liable for a monetary forfeiture in the amount of ten thousand dollars (\$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. Oaks’ operation of an unlicensed FM broadcast station on the frequency 98.1 MHz, at his residence in Beaverton, Oregon. For the reasons provided below, we will dismiss Mr. Oaks’ petition for reconsideration as untimely.

II. BACKGROUND

2. On June 9, 2003, an agent of the Commission’s Portland, Oregon Resident Agent Office (“Portland Office”) observed an antenna on the balcony of an apartment building that was operating on the frequency 98.1 MHz at a field strength level that exceeded the permissible level for a non-licensed low-power radio transmitter by 1,719 times.³ The agent placed a Notice of Unlicensed Radio Operation under the apartment door corresponding to the balcony upon which the antenna was observed.

3. On June 11, 2003, the Portland Office sent an Official Notice of Unlicensed Radio Operation (“Official Notice”) by both certified and regular mail. The Official Notice described the FM antenna’s location and frequency, and noted that the Commission had no authorization on record permitting operation of the station. The Official Notice stated that if Mr. Oaks was operating a radio station without Commission authorization, he must discontinue the operation immediately, and further warned Mr. Oaks that fine, imprisonment, and equipment confiscation could result from any operation of

¹ *David Michael Oaks*, 19 FCC Rcd 21980 (Enf. Bur. 2004) (“*Forfeiture Order*”).

² 47 U.S.C. § 301.

³ Section 15.239 of the Rules, 47 C.F.R. § 15.239, provides that non-licensed broadcasting in the 88-108 MHz band is permitted only if the field strength of the transmissions does not exceed 250 µV/M at three meters.

radio transmitting equipment without Commission authorization. Although the certified mail Official Notice was returned as “unclaimed,” the copy of the Official Notice that was sent by regular mail was not returned by the Postal Service.

4. On July 3, 2003, an agent of the Portland Office spoke with Mr. Oaks by telephone regarding the unlicensed operation of radio stations in the FM broadcast frequency band. During the course of the conversation, Mr. Oaks admitted to operation of the unlicensed station from his apartment. The agent advised Mr. Oaks of the operational parameters and limitations of Part 15 (unlicensed) transmitters.⁴ The agent warned Mr. Oaks again that if the radio station was in excess of Part 15 limitations, Mr. Oaks could be the subject of further enforcement action.

5. On July 14, 2003, an agent of the Portland Office again located a signal on 98.1 MHz operating from Mr. Oaks’ residence. Field strength measurements showed that the field strength of the station’s signal exceeded the permissible level for a non-licensed low-power radio transmitter by 435 times. A second Notice of Unlicensed Radio Operation was placed under Mr. Oaks’ apartment door. On September 16, 2003, the agent again located a signal on 98.1 MHz at Mr. Oaks’ residence. Field strength measurements showed that the field strength of the station’s signal exceeded the permissible level for a non-licensed low-power radio transmitter by 85 times. A second Official Notice of Unlicensed Radio Operation was sent on September 17, 2003, to Mr. Oaks by certified and regular mail, with the same delivery result as the first.

6. On March 12, 2004, the Portland Office issued a *Notice of Apparent Liability* (“NAL”) to Mr. Oaks for ten thousand dollars (\$10,000) for apparent willful and repeated violation of Section 301 of the Act.⁵ Mr. Oaks responded to the NAL in a timely manner, arguing that he was not trying to operate a pirate station, but simply to have wireless connection for radio reception among the rooms of his apartment. Mr. Oaks stated that he informed the Portland Office agent that he had no equipment with which to test the power of his antenna, and Mr. Oaks indicates that he was under the impression that he was working with the agent to identify an acceptable power limitation. Mr. Oaks says that in spite of his requests, he received no actual antenna strength figures from the agent. Mr. Oaks says he requested further measurements of his antenna power from the Portland Office agent by e-mail. When Mr. Oaks received the September 17, 2003 notice, he states that he realized that the transmitter could not be turned down far enough to satisfy FCC regulations and still have an audible signal in his apartment, and he discontinued operating the station. In support of his argument, Mr. Oaks points out that each time the agent tested the antenna’s signal strength, the level had decreased significantly.

7. The Bureau affirmed the NAL in the *Forfeiture Order*, pointing out that “[t]he Commission is not required to engineer the operating parameters of a station.” It noted that Mr. Oaks was told that he could purchase a Part 15 wireless microphone with which to compare the signal range of his antenna, and Mr. Oaks chose not to do so. Finally, the Bureau stated that Mr. Oaks was on notice from repeated warnings of the subject violation that operating the transmitter could result in sanctions. Mr. Oaks filed a petition for reconsideration of the *Forfeiture Order*,⁶ which the Commission received on December 8, 2004.

⁴ 47 C.F.R. § 15.1 *et. seq.* It appears that the agent specified that the antenna should not have more signal strength than a “Mr. Microphone,” a popular Part 15 consumer device for low-power, short range broadcasting. *Response to NAL*, received March 22, 2004.

⁵ *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200432920002 (Enf. Bur., Portland Office, released March 12, 2004).

⁶ Letter to “Sir or Madam” from Mike Oaks, reference File No. EB-03-PO-128, undated, received at the Commission on December 8, 2004.

III. DISCUSSION

8. Section 405 of the Act⁷ requires that a petition for reconsideration of a Commission action or an action by delegated authority must be filed no later than 30 days after the action that is the subject of the appeal. Once it has made public notice of the action pursuant to Section 1.4 of the Rules,⁸ the Commission loses jurisdiction to consider an appeal after 30 days have passed. Section 1.106 of the Rules reflects this statutory mandate.⁹

9. Mr. Oaks did not timely file his petition for reconsideration of the *Forfeiture Order*. The *Forfeiture Order* was released and placed on public notice on November 5, 2004.¹⁰ The thirtieth day after November 5, 2004 was December 5, 2004 (a Sunday). Mr. Oaks' petition for reconsideration was therefore due on December 6, 2004.¹¹ His petition for reconsideration was not received by the Commission until December 8, 2004. After December 6, 2004, pursuant to the Act, the Commission has no jurisdiction to consider Mr. Oaks' petition for reconsideration.¹² Accordingly, we must dismiss Mr. Oaks' petition for reconsideration as untimely.¹³

IV. ORDERING CLAUSES

10. Accordingly, **IT IS ORDERED** that, pursuant to Section 405(b) of the Act, and Section 1.106(f) of the Rules,¹⁴ the letter petition for reconsideration filed by David Michael Oaks **IS DISMISSED**.

11. Payment of the forfeiture assessed by the *Forfeiture Order* 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.¹⁵ 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 payment of the full amount of the NAL under an

⁷ 47 U.S.C. § 405(a).

⁸ 47 C.F.R. § 1.4.

⁹ 47 C.F.R. § 1.106(f).

¹⁰ *Daily Digest*, Vol. 23, No. 211, November 5, 2004.

¹¹ 47 C.F.R. § 1.4(j) provides that, when the calculated filing date falls on a "holiday," the document is due to be filed on the next business day. 47 C.F.R. § 1.4(e)(2) defines the term "holiday" as "Saturday, Sunday, officially recognized Federal legal holidays and any other day on which the Commission's offices are closed and not reopened before 5:30 p.m."

¹² *Reuters Ltd. v. FCC*, 781 F. 2d 946, 951 (D.C. Cir. 1986); *National Black Media Coalition v. FCC*, 760 F. 2d 1297, 1299-1300 (D.C. Cir. 1985, Scalia, J.) (FCC has no jurisdiction to consider an appeal after 30 days have passed from date of public notice, distinguishing *Gardner v. FCC*, 530 F. 2d 1086 (D.C. Cir. 1976)).

¹³ *Metromedia, Inc.*, 56 FCC2d 909 (1975) (Commission may not waive 30 day filing period to accept a petition for reconsideration filed one day late); *Mobile Telephone, Inc.* 91 FCC 2d 907 ¶¶ 4-5 (1982); *Nextel Communications, Inc.*, 13 FCC Rcd. 281, 283 ¶ 6 (Wireless Telecom. Bur. 1998).

¹⁴ 47 C.F.R. § 1.106(f).

¹⁵ 47 U.S.C. § 504(a).

installment plan should be sent to: Associate Managing Director – Financial Operations, 445 12th Street, S.W., Room 1A625, Washington, D.C. 20554.¹⁶

12. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by First Class and Certified Mail Return Receipt Requested to Mr. Michael David Oaks at his address of record.

FEDERAL COMMUNICATIONS COMMISSION

George R. Dillon
Assistant Chief, Enforcement Bureau

¹⁶ See 47 C.F.R. § 1.1914.