

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

In the Matter of)
) File Number: EB-07-HU-007
Donald Winton)
) NAL/Acct. No.: 200732540003
Licensee of Citizen Band Radio Station)
Corpus Christi, Texas) FRN: 0016201386
)

FORFEITURE ORDER

Adopted: July 10, 2007

Released: July 12, 2007

By the Regional Director, South Central Region, Enforcement Bureau:

I. INTRODUCTION

1. In this *Forfeiture Order* ("Order"), we issue a monetary forfeiture in the amount of seven thousand dollars (\$7,000) to Donald Winton for willful violation of Section 95.426(a) of the Commission's Rules.¹ The noted violation involves Mr. Winton's failure to make his CB radio station available for inspection.

II. BACKGROUND

2. On February 21, 2007, in response to a complaint that a CB radio station in Corpus Christi, Texas was jamming communications on CB channel 19 by continually re-broadcasting the programming of a local AM broadcast station, an agent from the Commission's Houston Office of the Enforcement Bureau ("Houston Office") monitored communications on CB channel 19 in the Corpus Christi area. The agent observed a radio signal on CB channel 19 re-broadcasting the programming of a local AM broadcast station; and using radio direction finding techniques determined that the signal originated from an antenna mounted on a house in Corpus Christi, Texas.

3. Still on February 21, 2007, while the agent was making measurements on the radio signal from the CB radio station, Donald Winton exited the house and walked down the driveway. The agent introduced himself as an FCC agent, and requested to inspect the CB radio station inside the house. Mr. Winton confirmed this location was his residence and that the CB station belonged to him, but refused to make the station available for inspection. The agent advised Mr. Winton that the Commission's Rules require the operator of a CB radio station to make the station available for inspection. Mr. Winton still refused to make the station available for inspection. The agent then requested that Mr. Winton go inside and take the station off the air because it was blocking communications on CB radio channel 19. Mr. Winton walked into the house and the station's transmissions ceased. Mr. Winton returned and continued to refuse to make the station available for inspection, so the agent left the area.

4. On April 23, 2007, the Houston Office issued a *Notice of Apparent Liability for Forfeiture* to Mr. Winton in the amount of seven thousand dollars (\$7,000), for the apparent willful

¹ 47 C.F.R. § 95.426(a).

violation of Section 301 of the Act.² Mr. Winton submitted a response to the *NAL* requesting a reduction or cancellation of the proposed forfeiture.

III. DISCUSSION

5. The proposed forfeiture amounts in this case was assessed in accordance with Section 503(b) of the Communications Act of 1934, as amended, ("Act")³ Section 1.80 of the Rules,⁴ 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 Mr. Winton'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.⁵

6. Section 95.426(a) requires that if an authorized FCC representative requests to inspect your CB station, you must make your station and records available for inspection.⁶ Section 303(n) of the Act authorizes the Commission to inspect all radio installations associated with stations ... which the Commission has by rule has authorized to operate without a license.⁷ Mr. Winton admitted to an agent from the Houston Office that he had a CB radio station within his residence. In addition, Mr. Winton demonstrated he had access to and control of the station by entering his residence and turning the transmitter off, while the agent waited outside. On February 21, 2007, in response to several requests by agent to inspect his station, Mr. Winton refused to make his CB station available for inspection. Based on the evidence before us, we find that on February 21, 2007, Mr. Winton willfully⁸ violated Section 95.426(a) of the Rules by refusing to allow an inspection of his CB station.

7. In response to the *NAL*, Mr. Winton asserts that his CB transmitter was not on when the agent arrived, and that, if it was on, it must have been operated by homeless people, whom he allows access to his home. He claims that he did not allow the agent access to his home, because the agent did not have a warrant and because he was concerned that his dogs might injure the agent. Finally, he states that he was not aware of any of the Commission's Rules governing CB radios.

8. We do not find Mr. Winton's response to the *NAL* persuasive. It is irrelevant whether the CB transmitter was on⁹ or whether homeless people were operating it when the agent requested to inspect Mr. Winton's CB station. In his response to the *NAL*, Mr. Winton admits that the CB transmitter was his

² *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200732540003 (Enf. Bur., Houston Office, April 23, 2007) ("*NAL*").

³ 47 U.S.C. § 503(b).

⁴ 47 C.F.R. § 1.80.

⁵ 47 U.S.C. § 503(b)(2)(E).

⁶ 47 C.F.R. § 95.426(a).

⁷ 47 U.S.C. § 303(n).

⁸ Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'willful,' ... means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act or any rule or regulation of the Commission authorized by this Act" See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

⁹ However, Mr. Winton has no explanation for how the agents used direction finding techniques to locate the source of the signal on CB Channel 19 to his residence or how they were able to observe the signal right before he came out of his house.

property. He also admits that he refused to provide the agent access to his CB station located in his residence. Section 303(n) of the Act and Section 95.426(a) of the Rules authorize inspection of all CB stations by the Commission. Accordingly, agents are not required to obtain a warrant to inspect a CB station. The agent informed Mr. Winton of these provisions when he requested to inspect the station.¹⁰ Moreover, if Mr. Winton was concerned about the agent's safety, he should have confined his dogs to a separate room, prior to allowing the agent to inspect his CB station, rather than refusing the inspection.¹¹

9. Finally, Mr. Winton asserts that a \$7,000 forfeiture would produce a financial hardship and requests that the forfeiture be cancelled or significantly reduced. However, Mr. Winton failed to submit sufficient documentation regarding his finances. Accordingly, we are unable to determine whether a reduction based on inability to pay is warranted and deny his request for reduction of the proposed forfeiture.

10. We have examined Mr. Winton'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 find no basis for cancellation or reduction of the \$7,000 forfeiture proposed for this violation.

IV. ORDERING CLAUSES

11. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.111, 0.311 and 1.80(f)(4) of the Commission's Rules, Donald Winton **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of seven thousand dollars (\$7,000) for violation of Section 95.426(a) of the Act.¹²

12. 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.¹³ 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, 445 12th Street, S.W., Room 1A625, Washington, D.C. 20554.¹⁴

¹⁰ Although Mr. Winton was informed of Section 95.426 of the Rules, because Mr. Winton consciously refused to allow the agent access to his CB station, his violation was willful even if he was unaware of the Rule.

¹¹ According to the agent from the Houston Office, Mr. Winton did not mention his dogs when he refused to allow the inspection.

¹² 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4), 95.426(a).

¹³ 47 U.S.C. § 504(a).

¹⁴ See 47 C.F.R. § 1.1914.

13. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by First Class and Certified Mail Return Receipt Requested to Donald Winton at his address of record.

FEDERAL COMMUNICATIONS COMMISSION

A handwritten signature in black ink, appearing to read "Dennis P. Carlton", written over the printed name.

Dennis P. Carlton
Regional Director, South Central Region
Enforcement Bureau