

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

In the Matter of	)
	) EB-08-AT-0212
Dale Lloyd Allred	)
	) NAL/Acct. No. 200932480001
Tunnel Hill, Georgia	)
	) FRN 0018065417
	)

**FORFEITURE ORDER**

**Adopted:** November 14, 2008

**Released:** November 18, 2008

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 one thousand five hundred dollars (\$1,500) to Dale Lloyd Allred of Tunnel Hill, Georgia for willful and repeated violation of Sections 301 and 333 of the Communications Act of 1934, as amended (“*Act*”).<sup>1</sup> The noted violations involve Mr. Allred’s operation of an unlicensed transmitter on the frequency 157.5675 MHz, in Dalton, Georgia and interference with licensed radio communications.

**II. BACKGROUND**

2. On August 8, 2008, in response to several complaints of interference to school bus radio operations from Dalton Communications, Inc., licensee with call sign WQFN711 (“*Dalton Communications*”), agents from the Commission’s Atlanta Office of the Enforcement Bureau (“*Atlanta Office*”) monitored the frequency 157.5675 MHz in Dalton, Georgia and observed repeated radio transmissions being transmitted directly on top of school bus transmissions, often disrupting the school bus radio transmissions.<sup>2</sup> The agents, using a mobile direction-finding vehicle, identified the location of the interfering radio transmissions as the office and radio shop for Tri-County Communications (“*TCC Shop*”).

3. On that same day, the agents from the Atlanta Office conducted an inspection of radio equipment at the TCC Shop and interviewed TCC Shop’s chief executive officer, Mr. Allred, who admitted that he had intentionally operated a radio transmitter on 157.5675 MHz to cause the interference. Mr. Allred also stated that he had transmitted on 157.5675 MHz on other days during the summer months. Mr. Allred explained that he was interfering with Dalton Communications’ transmissions, because Dalton Communications had taken the school bus communications contract away from his company. Mr. Allred identified the handheld Kenwood model transceiver that he used to transmit on 157.5675 MHz, and the agents performed a test transmission verifying that the unit operated on 157.5675 MHz.

4. According to the manufacturer, Kenwood only manufactures hand-held transceivers for operation under Parts 90, 97, and 95 of the Commission’s Rules (“*Rules*”). Accordingly, use of the

<sup>1</sup> 47 U.S.C §§ 301, 333.

<sup>2</sup> The interfering transmissions were brief microphone key “clicks” immediately followed by a series of DTMF tones.

Kenwood transceiver to operate on 157.5675 MHz exceeded the limits for operation under Part 15 of the Rules and therefore required a license.<sup>3</sup> A search of the Commission's databases revealed no authorization to operate on 157.5675 MHz from the TCC Shop. Indeed, Dalton Communications is the only licensee authorized to operate on 157.5675 MHz in Dalton, GA.

5. On October 16, 2008, the Atlanta City Office issued a *Notice of Apparent Liability for Forfeiture* to Mr. Allred in the amount of seventeen thousand dollars (\$17,000) for the apparent willful and repeated violation of Sections 301 and 333 of the Act.<sup>4</sup> Mr. Allred submitted a response to the *NAL* requesting cancellation or reduction of the proposed forfeiture.

### III. DISCUSSION

6. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Communications Act of 1934, as amended ("Act"),<sup>5</sup> Section 1.80 of the Rules,<sup>6</sup> 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. Allred'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.<sup>7</sup>

7. Section 301 of the Act states that "[n]o person shall use or operate any apparatus for the transmission of energy or communications or signals by radio ... except under and in accordance with this Act and with a license in that behalf granted under the provisions of this Act." On August 8, 2008, agents from the Atlanta Office, using direction finding techniques, determined that a transmission on 157.5675 MHz emanated from the TCC Shop in Dalton, GA. The agents interviewed Mr. Allred, who admitted that he had intentionally transmitted on that frequency on several days over the course of the summer. Mr. Allred showed the agents his handheld transceiver, which was capable of operating on 157.5675 MHz.

8. Section 333 of the Act states that "[n]o person shall willfully or maliciously interfere with or cause interference to any radio communications of any station licensed ... under this Act." The Atlanta Office received several complaints from Dalton Communications that someone was interfering with its licensed communications on 157.5675 MHz. On August 8, 2008, agents from the Atlanta Office observed key clicks and DTMF tones disrupting school bus communications on 157.5675 MHz. On August 8, 2008, agents from the Atlanta Office determined that the interfering transmissions on 157.5675 MHz were emanating from the TCC Shop in Dalton, GA. On August 8, 2008, Mr. Allred admitted to operating a handheld transceiver on 157.5675 MHz to interfere with Dalton Communications' licensed transmissions. Mr. Allred stated that he had done so on several days over the course of the summer.

9. In response to the *NAL*, Mr. Allred denies that his operation was intentional or that he

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<sup>3</sup> Section 15.209 of the Rules provides that non-licensed broadcasting in the 88-216 MHz band is permitted only if the field strength of the transmission does not exceed 150  $\mu\text{V}/\text{m}$  at three meters. 47 C.F.R. § 15.209. Mr. Allred's transmissions triggered Dalton Communications' repeater, which was located 3.7 miles away from the TCC Shop. Devices compliant with Part 15 typically have a range far less than this distance.

<sup>4</sup> *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200932480001 (Enf. Bur., Atlanta Office, October 16, 2008) ("*NAL*").

<sup>5</sup> 47 U.S.C. § 503(b).

<sup>6</sup> 47 C.F.R. § 1.80.

<sup>7</sup> 47 U.S.C. § 503(b)(2)(E).

maliciously caused interference to the school bus communications. He claims that his equipment was mounted incorrectly in his service vehicle which caused the “PTT of the VHF to mash against the base of the UHF and go into the TX by itself.” He also states that he was intimidated by the police officer who accompanied the agents during the interview and that he would have admitted to anything at the time.

10. We do not find Mr. Allred’s response to the *NAL* reliable. Mr. Allred did not simply respond “yes” or “no” to the agents’ questions during the inspection. Mr. Allred admitted to operating his handheld transmitter to interfere with Dalton Communications’ school bus communications on several days over the course of the summer and explained his motivation for causing the interference, frustration at losing the communications contract to Dalton Communications. We do not find it likely that Mr. Allred would have fabricated all of the information that he provided, because he was intimidated by the police officer present during the interview. In addition, on August 8, 2008, the agents’ observed that the interfering communications ceased when bus driver communications ceased and did not resume until the driver discussions resumed. The timing of the interfering communications indicated that the transmissions were not random or unintentional. Thus, based on the totality of the circumstances, we will continue to rely on Mr. Allred’s statements from the inspection, as reflected in the agents’ contemporaneous notes. Moreover, Mr. Allred does not dispute that transmissions on 157.5675 MHz were sent from his handheld transceiver on more than one day over the course of the summer. Thus, even assuming *arguendo* that the transmissions were not willful, he admitted that his operation was repeated and we need not find his violation of Section 301 of the Act to be willful to assess a forfeiture. However, based on the evidence before us, we find that Mr. Allred willfully<sup>8</sup> and repeatedly<sup>9</sup> violated Sections 301 and 333 of the Act on August 8, 2008 and on several days throughout the summer by operating a radio transmitter on 157.5675 MHz without a license and by interfering with licensed communications.

11. In addition, Mr. Allred asserts that a \$17,000 forfeiture would produce a financial hardship and requests that the forfeiture be cancelled or significantly reduced. The Commission has determined that, in general, an entity’s gross revenues are the best indicator of its ability to pay a forfeiture.<sup>10</sup> After reviewing Mr. Allred’s financial documentation, we conclude that a reduction of the forfeiture to \$1,500 would be appropriate.

12. We have examined Mr. Allred’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 a reduction of the proposed forfeiture to \$1,500 is warranted, based on Mr. Allred’s documented inability to pay.

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<sup>8</sup> 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).

<sup>9</sup> As provided by 47 U.S.C. § 312(f)(2), a continuous violation is “repeated” if it continues for more than one day. The *Conference Report* for Section 312(f)(2) indicates that Congress intended to apply this definition to Section 503 of the Act as well as Section 312. See H.R. Rep. 97<sup>th</sup> Cong. 2d Sess. 51 (1982). See *Southern California Broadcasting Company*, 6 FCC Rcd 4387, 4388 (1991) and *Western Wireless Corporation*, 18 FCC Rcd 10319 at fn. 56 (2003).

<sup>10</sup> See *PJB Communications of Virginia, Inc.*, 7 FCC Rcd 2088, 2089 (1992) (forfeiture not deemed excessive where it represented approximately 2.02 percent of the violator’s gross revenues); *Local Long Distance, Inc.*, 16 FCC Rcd 24385 (2000) (forfeiture not deemed excessive where it represented approximately 7.9 percent of the violator’s gross revenues); *Hoosier Broadcasting Corporation*, 15 FCC Rcd 8640 (2002) (forfeiture not deemed excessive where it represented approximately 7.6 percent of the violator’s gross revenues).

### III. ORDERING CLAUSES

13. 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, Dale Lloyd Allred **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of one thousand five hundred dollars (\$1,500) for violations of Sections 301 and 333 of the Act.<sup>11</sup>

14. 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>12</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/Account Number and FRN Number referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank TREAS/NYC, and account number 27000001. For payment by credit card, an FCC Form 159 (Remittance Advice) must be submitted. When completing the FCC Form 159, enter the NAL/Account number in block number 23A (call sign/other ID), and enter the letters "FORF" in block number 24A (payment type code). Requests for full payment under an installment plan should be sent to: Chief Financial Officer -- Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554. Please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: [ARINQUIRIES@fcc.gov](mailto:ARINQUIRIES@fcc.gov) with any questions regarding payment procedures. Mr. Allred will also send electronic notification on the date said payment is made to [SCR-Response@fcc.gov](mailto:SCR-Response@fcc.gov).

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

FEDERAL COMMUNICATIONS COMMISSION

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

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<sup>11</sup> 47 U.S.C. §§ 301, 333, 503(b); 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4).

<sup>12</sup> 47 U.S.C. § 504(a).