

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

In the Matter of	)	
	)	
Bear Creek Mountain Resort	)	File Number EB-08-PA-037
	)	
Macungie, Pennsylvania	)	NAL/Acct.No. 200832400006
	)	
	)	FRN 0017-47-0907

FORFEITURE ORDER

Adopted: June 22, 2009

Released: June 24, 2009

By the Regional Director, Northeast Region, Enforcement Bureau:

I. INTRODUCTION

1. In this *Forfeiture Order* (“*Order*”), we issue a monetary forfeiture in the amount of five thousand dollars (\$5,000) to Bear Creek Mountain Resort (“Bear Creek”) for willfully and repeatedly violating Section 301 of the Communications Act of 1934, as amended (“Act”),¹ by operating radio transmitting equipment on the frequency 462.500 MHz without a license.

II. BACKGROUND

2. On February 18, 2008, the Philadelphia Office received a complaint from a member of the Personal Radio Association that Bear Creek was operating radio communications equipment on several frequencies without a license. On February 19, 2008, an agent from the FCC’s Philadelphia Office conducted a search in the Universal Licensing System (ULS) database and found no evidence that Bear Creek was authorized to operate radio transmitting equipment on any frequencies in Macungie, Pennsylvania.

3. On February 21, 2008, an agent from the FCC’s Philadelphia Office, using a mobile digital direction finding vehicle, monitored several frequencies near Bear Creek. The agent observed and recorded several transmissions on 461.3500 MHz, 462.5000 MHz, 464.4250 MHz, and 467.7625 MHz. On 462.500 MHz, the agent heard an individual request assistance bringing a girl with a broken wrist down the mountain. The individual stated that the girl is located at the top of the “Broadway” trail near the exit of the “F” chairlift. Later that day, an agent interviewed a Bear Creek employee, who listened to the agent’s audio recordings and confirmed that the conversation transmitted on the frequency 462.500 MHz was between employees of Bear Creek. During a subsequent phone interview the employee acknowledged that Bear Creek had been operating radio transmitting equipment since 2001 on the frequency 462.500 MHz and others.

4. On June 5, 2008, the Commission’s Philadelphia Office issued a *Notice of Apparent Liability for Forfeiture* (“NAL”) to Bear Creek for a forfeiture in the amount of ten thousand dollars

¹47 U.S.C. § 301.

(\$10,000) for willful and repeated violation of Section 301 of the Act.² Bear Creek filed a response to the *NAL* by letter dated June 25, 2008.³ In its response, Bear Creek requests a cancellation of the *NAL* on three grounds. First, Bear Creek states that, prior to the inspection by FCC agents on February 21, 2008, it did not know that a license was required for operation of its private land mobile system. Bear Creek reports that it purchased its radios from Global 2-Way.com (“Global 2-Way”) in Marco Island, Florida and that Global 2-Way never advised Bear Creek that it needed a license. Second, Bear Creek claims that cancellation of the *NAL* is warranted because Bear Creek personnel immediately applied for a license once the FCC agents advised them that a license was required. Third, Bear Creek submits that the absence of prior FCC violations warrants cancellation of the *NAL*.

III. DISCUSSION

5. The forfeiture amount proposed in this case was assessed in accordance with Section 503(b) of the Communications Act of 1934, as amended (“Act”),⁴ Section 1.80 of the Rules,⁵ and the *Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*.⁶ In assessing forfeitures, Section 503(b)(2)(D) of the Act requires that we 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 such other matters as justice may require.⁷ As discussed below, we have considered Bear Creek’s response to the *NAL* in light of these statutory factors and have found that a reduction of the proposed forfeiture amount is warranted.

6. Section 301 of the Act states that no person shall use or operate any apparatus for the transmission of energy or communications or signals by radio within the United States except under and in accordance with the Act and with a license.⁸ On February 21, 2008, an FCC agent determined that Bear Creek operated radio transmitting equipment on 462.500 without an FCC license. A Bear Creek employee informed the FCC agent that Bear Creek had been operating the radios on 462.500 MHz and other frequencies since 2001. The violation of Section 301 of the Act therefore is repeated.⁹

7. In light of our determination that Bear Creek’s violation was repeated, we are not required under the Act to make a determination as to whether the violation was willful. Section 503(b) of the Act gives the Commission the authority to assess a forfeiture penalty against any person if the Commission

²Notice of Apparent Liability for Forfeiture, NAL/Acct. No. 200832400006 (Enf. Bur., Philadelphia Office, released June 5, 2008).

³ Letter from Mark Schroetel, Bear Creek General Manager, to Philadelphia Field Office, dated June 25, 2008.

⁴47 U.S.C. § 503(b).

⁵47 C.F.R. § 1.80.

⁶12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999) (“Forfeiture Policy Statement”).

⁷47 U.S.C. § 503(b)(2)(D).

⁸47 U.S.C. § 301.

⁹Section 312(f)(2) of the Act, 47 U.S.C. § 312(f)(2), which also applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that “[t]he term ‘repeated’, when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day.”

determines that the person has “willfully or repeatedly” failed to comply with the provisions of the Act or with any rule, regulation or order issued by the Commission.¹⁰ We nevertheless address Bear Creek’s other stated bases for cancelling the *NAL*.

8. Bear Creek claims that the *NAL* should be cancelled because it did not knowingly violate the Commission’s Rules. For a violation to be willful, it must be committed consciously and deliberately, irrespective of any intent to violate the Rules.¹¹ Bear Creek does not dispute that it operated radio transmitting equipment on 462.500 MHz without a license and therefore its actions were willful, as that term is defined in the Act. As the owner and operator of the radio equipment, Bear Creek, not its radio vendor, is responsible for complying with all applicable FCC rules. The Commission has consistently stated that ignorance of the law is not a mitigating factor.¹²

9. We also find that cancellation is not warranted based on Bear Creek’s remedial actions. Bear Creek reports that it immediately applied for a license once it learned from the FCC agent that a license was required.¹³ As the Commission has stated, “corrective action taken to come into compliance with Commission rules or policy is expected, and does not nullify or mitigate any prior forfeitures or violations.”¹⁴

10. We likewise decline to reduce the forfeiture amount based on Bear Creek’s claim that it has never violated the Commission’s Rules. The Commission considers downwardly adjusting a forfeiture amount only when a licensee has a demonstrated history of compliance with our Rules. Here, because Bear Creek did not become a Commission licensee until after the violation at issue, it has no history with the Commission upon which a history of compliance reduction can be based in this instance.¹⁵

11. We have examined Bear Creek’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 Bear Creek willfully and repeatedly violated Section 301 of the Act. We conclude, however, that Bear Creek’s unlicensed operation was not analogous to the intentional unlicensed operation of a “pirate” station operator who operates its station in flagrant violation of Commission rules. We therefore

¹⁰ 47 U.S.C. § 503(b) (emphasis added).

¹¹ 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’, when used with reference to the commission or omission of any act, 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).

¹² *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991), citing *Vernon Broadcasting, Inc.*, 60 RR 2d 1275, 1277 (1986) and *Fay Neel Eggleston*, 19 FCC 2d 829 (1969).

¹³ Bear Creek was granted a private land mobile license on March 26, 2008, Call Sign WQIN522 (Application No. 0003362190).

¹⁴ See *Seawest Yacht Brokers*, 9 FCC Rcd 6099 (1994).

¹⁵ See e.g., *Gabriel Dorceley*, 19 FCC Rcd 8488, 8489-90 ¶ 9 (Enf. Bur. 2004); *Odino Joseph*, 18 FCC Rcd 16522, 16524 ¶ 8 (Enf. Bur. 2003).

downwardly adjust the \$10,000 base forfeiture amount to five thousand dollars (\$5,000).¹⁶

IV. ORDERING CLAUSES

12. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Act, and Sections 0.111, 0.311 and 1.80(f)(4) of the Rules¹⁷ that Bear Creek Mountain Resort **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of five thousand dollars (\$5,000) for willful and repeated violation of Section 301 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/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. 20554.¹⁸ Please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: ARINQUIRIES@fcc.gov with any questions regarding payment procedures. Bear Creek Mountain Resort shall also send electronic notification on the date said payment is made to NER-Response@fcc.gov.

14. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by First Class and Certified Mail Return Receipt Requested to Bear Creek Mountain Resort's address of record.

FEDERAL COMMUNICATIONS COMMISSION

G. Michael Moffitt.
Regional Director, Northeast Region
Enforcement Bureau

¹⁶ See e.g., *Gateway Security Systems, Inc.*, 18 FCC Rcd 24026 (EB 2003), citing to *WWC Licensee LLC*, 16 FCC Rcd 19490, 19492 (2001).

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

¹⁸ See 47 C.F.R. § 1.1914.