

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

In the Matter of)	
)	File Number: EB-06-CG-064
Steven A. Skalecki)	
)	NAL/Acct. No: 200832320001
Milwaukee, WI)	
)	FRN: 0017228933

MEMORANDUM OPINION AND ORDER

Adopted: October 4, 2011

Released: October 6, 2011

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this Memorandum Opinion and Order (“*MO&O*”), issued pursuant to section 405 of the Communications Act of 1934, as amended (“*Act*”),¹ and section 1.106 of the Commission’s rules,² we deny the Petition for Reconsideration (“*Petition*”)³ filed by Steven A. Skalecki (“*Mr. Skalecki*”) in response to the Forfeiture Order issued by the Enforcement Bureau’s Northeast Region (the “*Region*”).⁴ The *Forfeiture Order* imposed a monetary forfeiture in the amount of \$10,000 for *Mr. Skalecki*’s willful and repeated operation of an unlicensed broadcast station in violation of section 301 of the Communications Act of 1934, as amended (“*Act*”).⁵ For the reasons set forth below, the *Petition* is denied.

II. BACKGROUND

2. On December 14, 2007, the Enforcement Bureau’s Chicago Office issued a Notice of Apparent Liability for Forfeiture (“*NAL*”) to *Mr. Skalecki* for operation of an unlicensed broadcast station on the frequency 92.9 MHz in Milwaukee, Wisconsin.⁶ As detailed in the *NAL*, agents from the Chicago

¹ 47 U.S.C. § 405.

² 47 C.F.R. § 1.106.

³ See Letter from Steven H. Jesser, counsel for Steven A. Skalecki, to Paula Michele Ellison, Acting General Counsel, dated April 14, 2009, which we are treating as a timely-filed Petition for Reconsideration. At the staff’s request, Skalecki also submitted supplemental information. See “Order of Events Leading to the Issuance of Notice of Apparent Liability for Forfeiture (NAL) by Steven A. Skalecki,” dated June 22, 2009 (“*NAL Order of Events*”) and “Order of Events on Sonny Soviato (tenant who rented @ 9026 W. Burdick Avenue),” dated July 2, 2009 (“*Sonny Soviato Order of Events*”). The Petition for Reconsideration and the supplements will be referred to collectively as the “*Petition*.”

⁴ *Steven A. Skalecki*, Forfeiture Order, 24 FCC Rcd 3061 (Enf. Bur. 2009) (“*Forfeiture Order*”).

⁵ 47 U.S.C. § 301.

⁶ *Steven A. Skalecki*, Notice of Apparent Liability for Forfeiture, NAL/Acct. No. 200832320001 (Chicago Office, rel. Dec. 14, 2007).

Office determined that, despite receipt of a Notice of Unlicensed Operation,⁷ Mr. Skalecki continued to operate an unlicensed station on 92.9 MHz from his property at 9026 W. Burdick Avenue in Milwaukee, Wisconsin between March 25, 2006 and May 28, 2007.⁸ In the *Forfeiture Order*, the Region affirmed the findings in the *NAL* and rejected Mr. Skalecki's claims that he did not have any broadcast equipment at 9026 W. Burdick Avenue and that the broadcasts on 92.9 MHz were coming from another nearby property.⁹

3. In the Petition, Mr. Skalecki requests an evidentiary hearing under section 503(b)(3)(A) of the Act.¹⁰ In the alternative, Mr. Skalecki requests cancellation of the proposed forfeiture and reiterates his claims in response to the *NAL* that he did not operate a radio station on 92.9 MHz at his residence and that the only equipment he operated from his residence was his weather monitoring equipment.¹¹ In addition, Mr. Skalecki now claims that he was at work during the times the FCC agents determined that a station was operating from his residence and that an individual named Sonny Soviato ("Mr. Soviato") was operating the station without his knowledge during the dates in question.¹²

4. Mr. Skalecki reports that he first met Mr. Soviato in December 2005 at a local restaurant. Mr. Soviato "wanted to spread the Word of the Lord via freedom of speech" and asked Mr. Skalecki if he had a place for him "to set up his computer equipment for this purpose."¹³ Mr. Skalecki states that Mr. Soviato asked "to rent my home intermittently. . . particularly on Sundays and on other religious days for a total of up to 6 or 7 days each month" at a rate of forty dollars per day.¹⁴ Mr. Skalecki further reports that when Mr. Soviato installed his equipment, Mr. Soviato connected his own computer to a router module, which was connected to a small "black box,"¹⁵ which in turn was connected to Mr. Skalecki's weather transmission cable.¹⁶ Mr. Skalecki reports that he "suspected Sonny's [Mr. Soviato's] equipment" as early as March 2007, which is approximately one year prior to the date Mr. Skalecki filed his response to the *NAL*. According to Mr. Skalecki, Mr. Soviato assured him he was transmitting on the

⁷ On April 17, 2006, the Chicago Office issued a Notice of Unlicensed Operation ("*NOUO*") to Mr. Skalecki for his unlicensed operation of an FM broadcast station on the frequency 92.9 MHz from his property in Milwaukee, Wisconsin. The *NOUO* warned that unlicensed operation of a radio station violated the Act and the Rules and that continued operation could subject the operator to further enforcement action.

⁸ A comprehensive recitation of the facts and history of this case can be found in the *NAL* and the *Forfeiture Order*, which are incorporated here by reference.

⁹ *Forfeiture Order*, 24 FCC Rcd at 3063.

¹⁰ 47 U.S.C. § 503(b)(3)(A).

¹¹ See *NAL Order of Events* and *Sonny Soviato Order of Events*. In response to the *NAL*, Mr. Skalecki stated that he does not live at 9026 W. Burdick Avenue and that the house "is minimally furnished, since it is used for weather observation only. The 50 ft. pole in the backyard is used for weather monitoring purposes." See *NAL* at 1. In the *NAL Order of Events*, Mr. Skalecki refers to the property at 9026 W. Burdick Avenue as his "residence." Because Mr. Skalecki does not deny owning the property at 9026 W. Burdick Avenue, it is irrelevant whether he lives there and we will refer to the property therein as his residence.

¹² See *NAL Order of Events* and *Sonny Soviato Order of Events*.

¹³ See *Sonny Soviato Order of Events* at 1.

¹⁴ *Id.*

¹⁵ Mr. Skalecki explains that the "black box" contained a circuit board and "dip switches and knobs for adjusting the audio level." See *Sonny Soviato Order of Events* at 1.

¹⁶ *Id.*

Internet only, but Mr. Skalecki now reports that he believes the “black box” was the “broadcast culprit on 92.9 MHz which I was not aware of at the time.”¹⁷

III. DISCUSSION

5. Petitions for reconsideration are granted only in limited circumstances. Absent “a material error or omission in the underlying order,” or unless a petitioner raises “additional facts not known or not existing until after the petitioner’s last opportunity to present such matters,” reconsideration is not warranted.¹⁸ “A petition for reconsideration that reiterates arguments . . . previously considered and rejected will be denied.”¹⁹ For the reasons set forth below, we deny the Petition.

6. First, it repeats arguments previously considered and rejected. The Region previously addressed in the *Forfeiture Order* Mr. Skalecki’s claim that an unlicensed radio broadcast station was not operating from his property at 9026 W. Burdick Avenue in Milwaukee, Wisconsin.²⁰ In rejecting Mr. Skalecki’s claim that the station was operating from a nearby property, the Region noted that the only evidence he provided in support of his claim was a list of nine dates on which he states he observed a station operating on 92.9 MHz from a nearby residence at South 93rd Street and West Oklahoma Avenue. Absent evidence that the agents’ direction findings and field strength measurements were in error, the Region found that there was no basis for rejecting the agents’ determination that an unlicensed broadcast station operated from 9026 W. Burdick Avenue, a property owned by Mr. Skalecki.²¹

7. Second, as to the facts Mr. Skalecki presents here for the first time regarding Mr. Soviato, we find that such facts could have been presented to the Bureau in response to the *NAL* and reconsideration on the basis of such facts is not warranted. Mr. Skalecki reports that he first began to “suspect [that] Sonny’s [Mr. Soviato’s] equipment” may be responsible for the broadcast transmissions emanating from his house in March 2007, which is almost one year before he filed the response to the *NAL*. In his response to the *NAL*, Mr. Skalecki makes no mention of Mr. Soviato or the possibility that someone else might be operating a station from his house. Given that Mr. Skalecki has failed to present any evidence that these facts were unknown or otherwise unavailable at the time of his response to the *NAL*, we will not consider them here.²²

8. We also deny Mr. Skalecki’s request for an evidentiary hearing under section 503(b)(3)(A) of the Act,²³ which states that “[a]t the discretion of the Commission, a forfeiture penalty

¹⁷ *Id.*

¹⁸ *Christian Family Network, Inc.*, Memorandum Opinion and Order, 23 FCC Rcd 18369, 18371, para. 8 (Enf. Bur. 2008); *accord Bible Broadcasting Network, Inc.*, Memorandum Opinion and Order, 26 FCC Rcd 2259 (Audio Div. 2011).

¹⁹ *Christian Family Network*, 23 FCC Rcd at 18371, para. 8.

²⁰ *Steven Skalecki*, Forfeiture Order, 24 FCC Rcd at 3063.

²¹ *Id.*

²² We also have reason to believe that “Sonny Soviato” may be an alias for Mr. Skalecki. On June 8, 2007, six months before issuance of the *NAL*, the Chicago Office received a letter allegedly from Mr. Soviato regarding three alleged low power stations operating in the Milwaukee area and asking if he can “get a license for a low power station.” The letter provided a return address of 3151 S. Lenox Street in Milwaukee, Wisconsin, which is Mr. Skalecki’s prior residence. During the period of time at issue here, such residence was registered as a trust in the names of Arthur and Clara Skalecki, Francis J. Skalecki, and Steven Skalecki. Agents also noted the remarkable similarities between Mr. Soviato’s signature on the June 8, 2007 letter and Mr. Skalecki’s signature on his responses to the *NOUO* and the *NAL*.

²³ 47 U.S.C. § 503(b)(3)(A).

may be determined against a person .. after notice and an opportunity for a hearing before the Commission or an administrative law judge....”²⁴ Section 1.80(g) of the Rules²⁵ states that procedures for hearings “will ordinarily be followed only when a hearing is being held for some reason other than the assessment of a forfeiture....” Section 1.80(g) of the Rules further states that “these procedures may be followed whenever the Commission, *in its discretion*, determines that they will better serve the ends of justice.” Accordingly, the “reference to a notice of opportunity for hearing mentioned in section 1.80(g) of the Rules is a discretionary provision available to the Commission that is not normally utilized when only monetary forfeiture matters are involved.”²⁶ We conclude that an evidentiary hearing is not required in this case, which involves solely a monetary forfeiture. Mr. Skalecki received notice regarding the legal and factual bases for the violation and proposed forfeiture in accord with the forfeiture provisions of the Act, and has been afforded an opportunity to respond and present exculpatory arguments and evidence.

IV. ORDERING CLAUSES

9. Accordingly, **IT IS ORDERED** that, pursuant to section 405 of the Communications Act of 1934, as amended,²⁷ and section 1.106 of the Commission’s rules (“Rules”),²⁸ that the Petition for Reconsideration filed by Steven A. Skalecki **IS DENIED** and the *Forfeiture Order* **IS AFFIRMED**.

10. **IT IS ALSO ORDERED** that, pursuant to section 503(b) of the Act, and sections 0.111, 0.311 and 1.80(f)(4) of the Rules,²⁹ Steven A. Skalecki **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of ten thousand dollars (\$10,000) for violations of section 301 of the Act.

11. Payment of the forfeiture shall be made in the manner provided for in section 1.80 of the Rules within thirty (30) days of the release of this Memorandum Opinion and Order. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for enforcement pursuant to section 504(a) of the Act.³⁰ Payment of the forfeiture must be made by credit card, check, or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Account Number and FRN 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 270000001. 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 with any questions regarding payment procedures. Steven A. Skalecki shall also send electronic notification to NER-Response@fcc.gov on the date said payment is made.

²⁴ *Id.*

²⁵ 47 C.F.R. § 1.80(g).

²⁶ *Arcom Communications*, Forfeiture Order, 20 FCC Rcd 20061, 20063 (Enf. Bur. 2005); *see also Computer Data, Inc.*, Order, 9 FCC Rcd 263 (Field Operations Bur., 1994).

²⁷ 47 U.S.C. § 405.

²⁸ 47 C.F.R. § 1.106.

²⁹ 47 U.S.C. §§ 301, 503(b); 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4).

³⁰ 47 U.S.C. § 504(a).

12. **IT IS FURTHER ORDERED** that this Memorandum Opinion and Order shall be sent by both regular mail and by certified mail, return receipt requested, to Steven A. Skalecki at his address of record.

FEDERAL COMMUNICATIONS COMMISSION

P. Michele Ellison
Chief, Enforcement Bureau