

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

In the Matter of)	File No.: EB-09-LA-0026
)	
Kevin W. Bondy)	NAL/Acct. No.: 200932900004
)	
Licensee of Station WQGX752)	FRN: 0016490633
Encino, California)	
)	
)	

FORFEITURE ORDER

Adopted: June 2, 2011

Released: June 6, 2011

By the Regional Director, Western Region, Enforcement Bureau:

I. INTRODUCTION

1. In this Forfeiture Order (“*Order*”), we issue a monetary forfeiture in the amount of twenty-four thousand dollars (\$24,000) to Kevin W. Bondy (“*Bondy*”), licensee of General Mobile Radio Service (“*GMRS*”) Station WQGX752, in Encino, California, for willful and repeated violation of sections 301 and 333 of the Communications Act of 1934, as amended (“*Act*”),¹ and section 95.183(a)(5) of the Commission’s rules (“*Rules*”),² and for willful violation of section 303(n) of the Act,³ and section 95.115 of the Rules,⁴ for engaging in unlicensed radio operation and intentional interference to licensed radio operations, and for refusing to allow an inspection of his radio equipment by FCC personnel.

II. BACKGROUND

2. On February 25, 2009, the Los Angeles Office of the Enforcement Bureau (“*Bureau*”) received a complaint of interference from the security manager for The Oaks Shopping Center (“*The Oaks*” or “*the shopping center*”), located at 350 West Hillcrest Drive, Thousand Oaks, California. The Oaks is the licensee of land mobile radio Station KOA995, with authority to operate on 461.375 MHz, 462.525 MHz, and 467.525 MHz. The Oaks is also the licensee of land mobile radio Station KG9712, with authority to operate on 466.375 MHz.

3. The next day, an agent from the Los Angeles Office contacted the security manager regarding the complaint. The security manager stated that an unknown individual was intentionally interfering with the shopping center’s maintenance operations on 462.525 MHz and 467.525 MHz and its security operations on 461.375 MHz and 466.375 MHz. The security manager also stated that this person was harassing store employees and patrons at The Oaks. According to the security manager, the person in

¹ 47 U.S.C. §§ 301, 333.

² 47 C.F.R. § 95.183(a)(5).

³ 47 U.S.C. § 303(n).

⁴ 47 C.F.R. § 95.115.

question told The Oaks's personnel to stop using 461.375MHz, the shopping center's security repeater input frequency.

4. On March 5, 2009, using direction-finding techniques, the Los Angeles agent located an unlicensed and unauthorized repeater transmitter in a secured radio communications facility on Oat Mountain in the Santa Susana Mountains. The agent observed pulsating signals on 461.375 MHz and 466.375 MHz emanating from the repeater transmitter and also observed a beam antenna pointed in the direction of The Oaks.

5. On March 6, 2009, in an effort to locate the point of origin of the transmission from the unlicensed and unauthorized repeater, the agent again monitored 461.375 MHz and 466.375 MHz in the vicinity of The Oaks and observed pulsating signals that interfered with the normal transmissions on those frequencies. Later that day, in consultation with personnel from The Oaks and the Ventura County Sheriff's Department, the Los Angeles agent used direction-finding techniques to locate the source of the transmissions while personnel from The Oaks spoke to the as yet unidentified subject on 464.7125 MHz and 462.8375 MHz.⁵ During the time The Oaks personnel engaged in radio communications with the subject, he acknowledged he was intentionally interfering with The Oaks's ability to communicate on 461.375 MHz and 466.375 MHz, in order to render The Oaks's repeater unusable and to force The Oaks off their licensed channels. Specifically, the subject told The Oaks personnel that they had "plenty of warning." The subject then effectively shut down all operations on The Oaks frequencies by transmitting NOAA weather radio over every channel, and told The Oaks personnel that he had been "jamming" the 461.375 MHz and 466.375 frequencies by "pulsing" them to shut down the repeater. The subject also said that The Oaks now had no repeaters, that The Oaks had to stop using the 461.375 MHz and 466.375 MHz repeater pair, and that The Oaks had to apply to the FCC to cancel the 461.375 MHz and 466.375 MHz repeater pair and request a new frequency pair. The subject said to The Oaks personnel that he gave The Oaks three weeks to vacate the frequencies but The Oaks did not do so, so "this is what [it has] come to." The subject then explained in detail to The Oaks personnel how to work with the FCC and frequency coordinators to apply for a new frequency for its license.

6. At approximately 7:30 p.m. the same day, the Los Angeles agent located the transmitter originating the voice transmissions on 464.7125 MHz and 462.8375 MHz (the frequencies being used by The Oaks and the still unidentified subject to communicate) to a vehicle located on the National Park Service parking structure across the street from The Oaks. The Ventura County Sheriff's Department then secured the area and identified the subject as Kevin Bondy. The Los Angeles agent identified himself to Bondy and explained that a refusal to allow an inspection could result in a fine. Then the agent asked Bondy if the agent could perform an inspection of all radios in his vehicle. Initially, Bondy refused to allow an inspection, then a few minutes later, agreed to allow an inspection, then refused again after the Los Angeles agent began inspecting all of the radio equipment that Bondy had in his vehicle.⁶ Bondy's refusal was witnessed by Ventura County Sheriff's Department deputies.

⁵ We note that The Oaks had no authorization to operate on 464.7125 MHz and 462.8375 MHz. However, they used those frequencies in this limited instance to communicate with the subject, and other personnel, because of the continual jamming of their authorized frequencies, and to allow the Los Angeles agent to track the transmissions and locate them to the source of the subject who was communicating with The Oaks. The agent ultimately located the transmissions to Bondy's vehicle.

⁶ The agent observed that the vehicle contained a console mount radio, another handheld radio, and a mobile radio unit in the back seat. The agent was not able to inspect any of these devices because of Bondy's refusal.

7. On March 9, 2009, the Los Angeles agent revisited the radio communications facility on Oat Mountain and observed that the beam antenna had been removed and the interference to The Oaks radio systems had ceased.

8. On May 14, 2009, the Los Angeles Office issued a Notice of Apparent Liability for Forfeiture (“NAL”) in the amount of \$24,000 to Bondy, finding that Bondy apparently willfully and repeatedly violated sections 301 and 333 of the Act, and section 95.183(a)(5) of the Rules,⁷ by engaging in unlicensed radio operation and intentional interference to licensed radio operations, and apparently willfully violated section 303(n) of the Act⁸ and section 95.115 of the Rules⁹ by failing to allow an inspection of his radio equipment by Commission personnel.¹⁰ After being granted an extension by the Los Angeles Office, Bondy filed a response¹¹ on August 21, 2009, arguing that he did not commit the violations, that he did not refuse to allow the inspection, and that he lacks the ability to pay the proposed forfeiture amount.¹²

III. DISCUSSION

9. The proposed forfeiture amount in this case was assessed in accordance with section 503(b) of the Act,¹³ section 1.80 of the Rules,¹⁴ and the Commission’s *Forfeiture Policy Statement*.¹⁵ In examining the *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.¹⁶

10. 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.”¹⁷ Although Bondy is a GMRS licensee under Part 95 of the Rules,¹⁸ he has no authorization to operate on 461.375 MHz and 466.375 MHz, the frequencies licensed to The Oaks, or 464.7125 MHz and 462.8375 MHz, the frequencies that the Los Angeles agent located Bondy transmitting on during the investigation on March 6, 2009. In his *Response*, Bondy denies transmitting on 464.7125 MHz and 462.8375 MHz and denies ordering anyone to stop transmitting on 461.375 MHz and 466.375 MHz. Bondy argues that this is

⁷ 47 C.F.R. § 95.183(a)(5).

⁸ 47 U.S.C. § 303(n).

⁹ 47 C.F.R. § 95.115.

¹⁰ *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200932900004 (Enf. Bur. Western Region, Los Angeles Office, released May 14, 2009).

¹¹ See Response to Notice of Apparent Liability for Forfeiture by Kevin W. Bondy, filed August 21, 2009 (“*Response*”).

¹² See *Response* at 1 – 3.

¹³ 47 U.S.C. § 503(b).

¹⁴ 47 C.F.R. § 1.80.

¹⁵ *The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087 (1997) (“*Forfeiture Policy Statement*”), recon. denied, 15 FCC Rcd 303 (1999).

¹⁶ 47 U.S.C. § 503(b)(2)(E).

¹⁷ 47 U.S.C. § 301.

¹⁸ Under Part 95 of the Rules, the frequencies 461.375 MHz, 466.375 MHz, 464.7125 MHz, and 462.8375 MHz, are not available for GMRS operation. See 47 C.F.R. § 95.29 (Channels available).

simply a case of mistaken identity.¹⁹ Bondy also argues that he did not own or operate any equipment on Oat Mountain, including the unauthorized repeater the Los Angeles agent found.²⁰ We find no merit in Bondy's arguments.

11. The Los Angeles agent used direction-finding techniques to locate Bondy as he transmitted on 464.7125 MHz and 462.8375 MHz on March 6, 2009. The agent successfully located the initiating transmissions to a vehicle located at the parking structure near The Oaks in which Bondy was operating. Bondy was then identified by a Ventura County police officer, a fact that Bondy does not dispute. While the Los Angeles agent was attempting to locate Bondy, The Oaks personnel recorded their transmissions with Bondy in which Bondy ordered them to vacate 461.375 MHz and 466.375 MHz while he was transmitting on 464.7125 MHz and 462.8375 MHz. Bondy stated in his transmissions to The Oaks personnel, that he had been jamming the frequencies, 461.375 MHz and 466.375 MHz, and that The Oaks had to stop using those frequencies. We are persuaded that the evidence presented by the Los Angeles agent, including the agent's direction-finding that located the transmissions to Bondy and the recording of Bondy's transmissions outweighs Bondy's unsupported assertions of mistaken identity. Accordingly, we find that Bondy willfully and repeatedly violated section 301 of the Act by consciously and deliberately operating on frequencies for which he had no authorization, for more than one day.

12. 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 or authorized by or under the Act or operated by the United States government."²¹ Section 95.183(a)(5) of the Rules states that a GMRS station operator must not communicate intentional interference.²² On March 6, 2009, Bondy acknowledged during his transmissions that he was causing intentional interference to The Oaks's authorized operations on 461.375 MHz and 466.375 MHz, in a successful effort to render The Oaks's repeater unusable and to force The Oaks off its licensed channels. Nevertheless, in his *Response* Bondy denies that he was causing interference and again argues that the investigation resulted in a case of mistaken identity.²³ As described above, while the Los Angeles agent sought to locate Bondy and located the transmissions on 464.7125 MHz and 462.8375 MHz to Bondy's vehicle, The Oaks personnel recorded their transmissions with Bondy in which he ordered The Oaks to vacate their licensed spectrum. Bondy stated in his transmissions to The Oaks personnel, that he had been jamming the frequencies, 461.375 MHz and 466.375 MHz, and that The Oaks had to stop using those frequencies. Therefore, we again find no merit to Bondy's argument that the investigation was a case of mistaken identity.

13. Bondy also argues that he did not transmit NOAA weather radio on all frequencies used by The Oaks, asserting that none of his radios contained any frequencies used by The Oaks, and he did not have a radio which received NOAA weather transmissions.²⁴ Although Bondy states that none of his radios contained any frequencies used by The Oaks, the Los Angeles agent used direction-finding equipment to locate Bondy by monitoring the frequencies Bondy was transmitting on, which were also being used by The Oaks, specifically, 464.7125 MHz and 462.8375 MHz. Consequently, we decline to believe Bondy's claims concerning the frequencies programmed into his radios. Accordingly, we find that Bondy willfully and repeatedly violated section 333 of the Act, and section 95.183(a)(5) of the Rules

¹⁹ See *Response* at 1 – 3.

²⁰ See *Response* at 1.

²¹ 47 U.S.C. § 333.

²² 47 C.F.R. § 95.183(a)(5).

²³ See *Response* at 3.

²⁴ See *Response* at 1.

by consciously and deliberately causing interference to The Oaks's licensed transmissions on 461.375 MHz and 466.375 MHz for more than one day.

14. Section 303(n) of the Act states "the Commission . . . shall have authority to inspect all radio installations . . ."²⁵ Section 95.115 of the Rules states that "[i]f an authorized FCC representative requests to inspect any station in a GMRS system, the licensee or station operator must make the station available."²⁶ On March 6, 2009, an agent from the Los Angeles Office requested an inspection of Bondy's radio equipment. Bondy argues that he did not refuse an inspection by the Los Angeles agent, although he acknowledges that he initially told the agent that he preferred that the agent not look at his radios, but ultimately allowed the inspection.²⁷ The Los Angeles agent reported that Bondy initially refused an inspection, then agreed, then refused a full inspection. According to Bondy, the agent was specifically focused on one of Bondy's handheld radios to determine which frequencies were programmed into the device, which was not readily apparent given that Bondy had programmed channel names, rather than frequencies, into the handheld. Conversely, the agent reported that there were other radios in the car which he was unable to inspect, including a console mount radio, a handheld radio, and a mobile radio unit in the back seat.²⁸ Bondy acknowledges that he was apprehensive about the inspection and asserts that he informed the agent that his actions, including attempting to program a frequency into the radio after Bondy told the agent that the radio was field programmable, were not necessary.²⁹

15. Although the Los Angeles agent attempted an inspection of Bondy's radio equipment and was allowed to begin to inspect a single handheld device, the agent's attempt to determine the actual frequency programmed into the handheld device was thwarted by Bondy, and Bondy indicated to the agent that he could not conduct a full and complete inspection of all of the radio equipment in the vehicle. We conclude that while Bondy may have allowed the inspection of a handheld radio, he apparently did not permit inspection of the rest of the radio equipment in his vehicle. The ability of an FCC agent to conduct an inspection pursuant to section 303(n) of the Act, and in this case, pursuant to section 95.115 of the Rules, is a crucial investigative tool for our enforcement purposes. When a subject disallows such an inspection, it severely undermines a field agent's ability to perform his or her job. Consequently, we find that Bondy willfully failed to allow an inspection of his radio equipment. Accordingly, we find that Bondy willfully violated section 303(n) of the Act and section 95.115 of the Rules by consciously and deliberately refusing to allow an FCC agent to inspect his radio equipment.

16. Bondy also claims that he lacks the ability to pay the proposed \$24,000 forfeiture and submits three years of tax records to support his claim. As indicated above, section 503(b)(2)(E) of the Act states that in determining the amount of a forfeiture penalty, the Commission shall 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.³⁰ We have reviewed Bondy's tax records, which, standing alone may arguably support his asserted inability to pay argument. However, the ability to pay a forfeiture is just one of the criteria we must consider when determining the appropriate forfeiture penalty for violations of the Act and the Rules. As required by the statute itself, we must consider the nature, circumstances, extent, and gravity of the violation.³¹ Here,

²⁵ 47 U.S.C. § 303(n).

²⁶ 47 C.F.R. § 95.115.

²⁷ See *Response* at 1 – 2.

²⁸ See *NAL* at para 7, n.7.

²⁹ See *Response* at 2.

³⁰ 47 U.S.C. § 503(b)(2)(E).

³¹ *Id.*

Bondy's violations include repeated acts of intentional and malicious interference designed to jam the operations of stations licensed by the Commission.³² The Commission is responsible for making and enforcing regulations to prevent interference and to maintain control over the use of the radio spectrum in a manner that promotes the public interest and convenience.³³ Bondy's acts cut at the heart of the Commission's responsibilities to protect the nation's airwaves and regulate use of the spectrum. Bondy operated a radio without a license on the specific frequencies assigned and licensed by the Commission to The Oaks, for the explicit and expressed purpose of prohibiting The Oaks's use of its licensed frequencies. This type of conduct inhibits the Commission's ability to effectively regulate and maintain control over the use of the spectrum and will not be tolerated. Indeed, Congress enacted section 333 of the Act specifically to provide the Commission with explicit authority to deal with willful or malicious interference.³⁴ The egregiousness of Bondy's willful acts of malicious interference warrant assessment of the full forfeiture amount proposed. Nothing on the record in this case, including Bondy's ability to pay, warrants any leniency or mitigation of that amount.³⁵

17. We have examined the *Response* to the *NAL* pursuant to the statutory factors above, and in conjunction with the *Forfeiture Policy Statement* and section 1.80 of the Rules. As a result of our review, we conclude that Bondy willfully and repeatedly violated sections 301 and 333 of the Act,³⁶ and section 95.183(a)(5) of the Rules,³⁷ and willfully violated section 303(n) of the Act,³⁸ and section 95.115 of the Rules.³⁹ Considering the entire record and the factors listed above, we find that Bondy is liable for a forfeiture in the amount of \$24,000.

IV. ORDERING CLAUSES

18. **ACCORDINGLY, IT IS ORDERED** that, pursuant to section 503(b) of the Communications Act of 1934, as amended ("Act"), and sections 0.111, 0.204, 0.311 and 1.80(f)(4) of the Rules, we find that Kevin Bondy **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of \$24,000 for willfully and repeatedly violating sections 301 and 333 of the Act, and section 95.183(a)(5) of the Rules, and for willfully violating section 303(n) of the Act and section 95.115 of the Rules.⁴⁰

19. 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

³² The frequencies being jammed by Bondy's interference were 461.375 MHz, authorized for use by The Oaks' license for Station KOA995, and 466.375 MHz, authorized for use by The Oaks's license for Station KG9712.

³³ 47 U.S.C. §§ 301, 303(f), 333.

³⁴ H.R. Rep. No. 101-316, at 13 (1989). The legislative history for section 333 identifies willful and malicious interference as "intentional jamming, deliberate transmission on top of the transmissions of authorized users already using specific frequencies in order to obstruct their communications, repeated interruptions, and the use and transmission of whistles, tapes, records, or other types of noisemaking devices to interfere with the communications or radio signals of other stations."

³⁵ See *Hodson Broadcasting Corporation*, Forfeiture Order, 24 FCC Rcd 13699 (Enf. Bur. 2009) (permittee's continued operation at variance with its construction permit constituted an intentional and continuous violation, which outweighed permittee's evidence concerning its ability to pay the proposed forfeitures).

³⁶ 47 U.S.C. §§ 301, 333.

³⁷ 47 C.F.R. §95.183(a)(5).

³⁸ 47 U.S.C. § 303(n).

³⁹ 47 C.F.R. § 95.115.

⁴⁰ 47 U.S.C. §§ 301, 303(n), 333, 503(b); 47 C.F.R. §§ 0.111, 0.204, 0.311, 1.80(f)(4), 95.115, 95.183(a)(5).

Act.⁴¹ 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 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 with any questions regarding payment procedures. Kevin Bondy shall also send electronic notification to WR-Response@fcc.gov on the date said payment is made.

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

FEDERAL COMMUNICATIONS COMMISSION

Rebecca L. Dorch
Regional Director, Western Region
Enforcement Bureau

⁴¹ 47 U.S.C. § 504(a).