

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

In the Matter of
Cerritos Ford
Licensee of Station WQKA311
Cerritos, California
File No.: EB-09-LA-0094
NAL/Acct. No.: 201032900003
FRN: 0018543215

FORFEITURE ORDER

Adopted: January 31, 2012

Released: February 1, 2012

By the Regional Director, Western Region, Enforcement Bureau:

I. INTRODUCTION

1. In this Forfeiture Order, we issue a monetary forfeiture in the amount of four thousand dollars (\$4,000) to Cerritos Ford, licensee of Station WQKA311 in Cerritos, California, for willfully and repeatedly violating Section 1.903(a) of the Commission's rules (Rules), which requires stations in the Wireless Radio Service, such as Station WQKA311, to operate in accordance with the provisions of the rule and as authorized by the Commission. The noted violations involve Cerritos Ford's operation on frequency 467.675 MHz, a frequency not authorized on the Station WQKA311 license.

II. BACKGROUND

2. After receiving a complaint, an agent from the Enforcement Bureau's Los Angeles Office (Los Angeles Office) used mobile direction finding equipment on August 27, 2009, to locate radio operations on 467.675 MHz emanating from Cerritos Ford's location at 18900 Studebaker Road, Cerritos, California. On September 1, 2009, the Los Angeles agent continued to monitor and determined the transmissions were voice communications by employees of Cerritos Ford on 467.675 MHz, a frequency not specified on Cerritos Ford's license for Station WQKA311. Later that day, the Los Angeles agent spoke with the Cerritos Ford Service Manager, who stated that Cerritos Ford believed that it was operating on one of the five frequencies authorized by the Station WQKA311 license. The Los Angeles agent then inspected two of the handheld radios being used by Cerritos Ford and determined that one of the five channels programmed into the radios had been programmed for frequency 467.675 MHz. The manager ensured that the operation on 467.675 MHz ceased at that time.

1 47 C.F.R. § 1.903(a).

2 Months prior to the instant investigation, the Cerritos Ford Service Manager was orally warned by a Los Angeles Office agent about the company's unlicensed operation on frequency 467.675 MHz. In response, Cerritos Ford obtained a license for Station WQKA311 to operate on five specific frequencies. The Commission granted the WQKA311 license to Cerritos Ford on March 3, 2009. The license authorizes Cerritos Ford to conduct mobile operations on 467.7625 MHz, 464.975 MHz, 463.2125 MHz, 461.6125 MHz, and 464.2125 MHz.

3. On January 27, 2010, the Los Angeles Office issued a Notice of Apparent Liability for Forfeiture (*NAL*) in the amount of \$4,000 to Cerritos Ford for operating on a frequency not authorized by its license on August 27, 2009, and September 1, 2009.³ Cerritos Ford responded to the *NAL* on February 24, 2010.⁴ In its *Response*, Cerritos Ford argues that its violation was not willful, that it made a good faith effort to comply with the Rules, and that it paid a third-party radio company to program its radios to ensure no violations took place.

III. DISCUSSION

4. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Communications Act of 1934, as amended (Act),⁵ Section 1.80 of the Rules,⁶ and the Commission's *Forfeiture Policy Statement*.⁷ In examining Cerritos Ford'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.⁸ We considered Cerritos Ford's response to the *NAL* in light of these statutory factors and find that neither cancellation nor reduction of the forfeiture is warranted for the reasons discussed below.

5. Section 1.903(a) of the Rules provides that stations in the Wireless Radio Service must be used and operated only in accordance with the rules applicable to their particular service and with a valid authorization granted by the Commission.⁹ Section 1.903(b) provides that the holding of an authorization does not create any rights beyond the terms, conditions, and period specified in the authorization.¹⁰ The Station WQKA311 license does not authorize Cerritos Ford to operate on frequency 467.675 MHz.¹¹ Nevertheless, a Los Angeles agent found that on August 27, 2009, and September 1, 2009, Cerritos Ford personnel operated on frequency 467.675 MHz at Cerritos Ford's location in Cerritos, California. An inspection by the agent revealed that the frequency 467.675 MHz was programmed into at least two handheld units in operation by Cerritos Ford personnel.

6. Although Cerritos Ford does not dispute the factual findings in the *NAL*, it contends that certain circumstances in this case nevertheless justify cancellation of the forfeiture. Cerritos Ford first argues that a third party was responsible for the violation because that third party programmed the unauthorized frequency into the Cerritos Ford radios. We disagree. Cerritos Ford acknowledges that a Los Angeles agent previously warned the company about its prior unauthorized operation on frequency 467.675 MHz and, in response, Cerritos Ford obtained the Station WQKA311 license on March 3, 2009.¹²

³ *Cerritos Ford*, File No. EB-09-LA-0094, Notice of Apparent Liability for Forfeiture, NAL/Acct. No. 201032900003 (Enf. Bur., Los Angeles Office, rel. Jan. 27, 2010) (*NAL*).

⁴ See Response of Cerritos Ford (filed Feb. 24, 2010, in EB-09-LA-0094) (*Response*).

⁵ 47 U.S.C. § 503(b).

⁶ 47 C.F.R. § 1.80.

⁷ *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), *recons. denied*, 15 FCC Rcd 303 (1999) (*Forfeiture Policy Statement*).

⁸ 47 U.S.C. § 503(b)(2)(E).

⁹ 47 C.F.R. § 1.903(a).

¹⁰ 47 C.F.R. § 1.903(b).

¹¹ Frequency 467.675 MHz is a frequency available for use in the General Mobile Radio Service (GMRS). See 47 C.F.R. § 95.29. According to Commission records, Cerritos Ford does not hold a GMRS license.

¹² See *Response* at 1.

Cerritos Ford hired a radio company to supply it with handheld radios using the licensed frequencies, and only realized that the radio company had used the wrong frequency after the Los Angeles agent's subsequent inspection on September 1, 2009. Thus, according to the company, Cerritos Ford had no way of knowing it was in violation.¹³ But Commission precedent has long held that "licensees are responsible for the acts and omission of their employees and independent contractors,"¹⁴ and thereby has consistently "refused to excuse licensees from forfeiture penalties where the actions of employees or independent contractors have resulted in violations."¹⁵ Consequently, even if we accept Cerritos Ford's assertion that the radio company programmed the wrong frequencies into the radios, the violations cannot be excused because responsibility for compliance with its license ultimately rests with Cerritos Ford.

7. Cerritos Ford also contends that the violation was not willful, yet the company does not deny that its personnel transmitted on frequency 467.675 MHz on August 27, 2009, and September 1, 2009. Under the applicable statute, the Commission need not demonstrate an intent to violate a rule to make a finding that a licensee engaged in willful misconduct. As stated in the *NAL*, Section 312(f)(1) of the Act,¹⁶ 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"¹⁷ As the facts are undisputed that Cerritos Ford personnel operated handheld radios on frequency 467.675 MHz on the dates in question without Commission authorization, we find that its violation of Section 1.903(a) of the rules was therefore, according to Commission precedent, willful.

8. Cerritos Ford also argues that it made a good faith effort to comply with the Rules, and to operate only on authorized frequencies. We do not find that this is a basis for reduction of the proposed forfeiture. Cerritos Ford's efforts to obtain an FCC license in 2009 came only after it was warned by a Los Angeles agent in 2008 that its operations on GMRS frequency 467.675 MHz were unauthorized. The Commission will generally only allow a good faith reduction when attempts at compliance, however unsuccessful, were taken prior to an inspection or involvement by the FCC.¹⁸

¹³ See *id.* at 1–2.

¹⁴ *Eure Family Limited Partnership*, Memorandum Opinion and Order, 17 FCC Rcd 21861, 21863–64 (2002) (*Eure*); *MTD, Inc.*, Memorandum Opinion and Order, 6 FCC Rcd 34, 35 (1991); *Wagenvoord Broadcasting Co.*, Memorandum Opinion and Order, 35 FCC 2d 361 (1972); see also *Rama Communications, Inc.*, Memorandum Opinion and Order, 23 FCC Rcd 18209, 18211 (Enf. Bur. 2008) ("[W]here lapses in compliance occur, neither the negligent acts nor omissions of station employees or agents, nor the subsequent remedial actions undertaken by the licensee, excuse or nullify the licensee's rule violation").

¹⁵ See *Eure*, 17 FCC Rcd at 21863–64 (quoting *Triad Broadcasting Company, Inc.*, Memorandum Opinion and Order, 96 FCC 2d 1235, 1244 (1984)).

¹⁶ 47 U.S.C. § 312(f)(1).

¹⁷ *NAL* at 2 n.5 (quoting *Application for Review of Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991)).

¹⁸ See, e.g., *Sutro Broadcasting Corporation*, Memorandum Opinion and Order, 19 FCC Rcd 15274, 15277 (2004) (stating that the Commission will generally reduce the assessed forfeiture amount "based on the good faith corrective efforts of a violator when those actions were taken prior to Commission notification of the violation") (emphasis added); see also *Starfish Television Network*, Forfeiture Order, 24 FCC Rcd 9147 (Enf. Bur. 2009) (providing good faith reduction as to party's unlicensed operation because operator submitted license application information to a consultant prior to inspection); *Blountstown Communications, Inc.*, Memorandum Opinion and Order, 22 FCC Rcd 1097 (Enf. Bur. 2007) (provided good faith reduction as to fencing violation because licensee was in the process of employing an expert fence installer prior to the FCC inspection).

9. We have examined Cerritos Ford'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 Cerritos Ford willfully and repeatedly violated Section 1.903(a) of the Rules. Considering the entire record and the factors listed above, we find that a forfeiture in the amount of \$4,000 is warranted.

IV. ORDERING CLAUSES

10. **ACCORDINGLY, IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.111, 0.204, 0.311, 0.314, and 1.80(f)(4) of the Commission's Rules, Cerritos Ford **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of four thousand dollars (\$4,000) for willfully and repeatedly violating Section 1.903(a) of the Commission's Rules.¹⁹

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 Forfeiture Order. If the forfeiture is not paid within the period specified, the case may be referred to the U.S. Department of Justice for collection pursuant to Section 504(a) of the Act.²⁰ 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 with any questions regarding payment procedures. Cerritos Ford shall also send electronic notification on the date said payment is made to WR-Response@fcc.gov

12. **IT IS FURTHER ORDERED** that a copy of this Forfeiture Order shall be sent by both First Class Mail and Certified Mail Return Receipt Requested to Cerritos Ford at 18900 Studebaker Road, Cerritos, CA 90703.

FEDERAL COMMUNICATIONS COMMISSION

Rebecca L. Dorch
Regional Director, Western Region
Enforcement Bureau

¹⁹ 47 U.S.C. § 503(b), 47 C.F.R. §§ 0.111, 0.204, 0.311, 0.314, 1.80(f)(4), 1.903(a).

²⁰ 47 U.S.C. § 504(a).