

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

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

MEMORANDUM OPINION AND ORDER

Adopted: February 14, 2013

Released: February 15, 2013

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 we dismiss as procedurally defective the petition for reconsideration² filed by Kevin W. Bondy (Mr. Bondy), licensee of General Mobile Radio Service (GMRS) Station WQGX752, in Encino, California, of the *Forfeiture Order* issued on June 6, 2011.³ The *Forfeiture Order* imposed a monetary forfeiture in the amount of \$24,000 for willful and repeated violation of Section 301 of the Communications Act of 1934, as amended (Act),⁴ for engaging in unlicensed radio operation; willful and repeated violation of Section 333 of the Act⁵ and Section 95.183(a)(5) of the Commission's rules (Rules),⁶ for intentional interference to licensed radio operations; and willful violation of Section 303(n) of the Act,⁷ and Section 95.115 of the Rules,⁸ for refusing to allow an inspection of his radio equipment by FCC personnel.

II. BACKGROUND

2. This case concerns intentional radio interference aimed at the licensed operations of The Oaks Shopping Center (The Oaks) in Thousand Oaks, California.⁹ An investigation of the interference by

¹ See 47 U.S.C. § 405.

² See *Kevin W. Bondy*, Petition for Reconsideration (filed July 5, 2011) (Petition).

³ *Kevin W. Bondy*, Forfeiture Order, 26 FCC Rcd 7840 (Enf. Bur. Western Region 2011) (*Forfeiture Order*), *aff'g* Notice of Apparent Liability for Forfeiture, NAL/Acct. No. 200932900004 (Enf. Bur. Western Region, Los Angeles Office, rel. May 14, 2009) (*NAL*).

⁴ 47 U.S.C. § 301.

⁵ 47 U.S.C. § 333.

⁶ 47 C.F.R. § 95.183(a)(5).

⁷ 47 U.S.C. § 303(n).

⁸ 47 C.F.R. § 95.115.

⁹ The Oaks is the licensee of land mobile radio Station KOA995, with authority to operate on frequencies 461.375 MHz, 462.525 MHz, and 467.525 MHz. The Oaks is also the licensee of land mobile radio Station KG9712, with (continued....)

the Enforcement Bureau's Los Angeles Office (Los Angeles Office) on March 5, 2009, revealed an unlicensed and unauthorized repeater transmitter in a secured radio communications facility on Oat Mountain in the Santa Susana Mountains. A Los Angeles agent observed pulsating signals on frequencies 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. These transmissions effectively "jammed" The Oaks operations on these two frequencies. 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 frequencies 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.¹⁰

3. Later on March 6, 2009, after consultation with personnel from The Oaks and the Ventura County Sheriff's Department, the Los Angeles agent used direction-finding techniques to locate the unidentified subject, who was communicating with The Oaks personnel on frequencies 464.7125 MHz and 462.8375 MHz. 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 frequencies 461.375 MHz and 466.375 MHz, in order to render The Oaks's repeater unusable and to force The Oaks off its licensed channels.¹¹ At approximately 7:30 p.m., the Los Angeles agent located the source of the voice transmissions on frequencies 464.7125 MHz and 462.8375 MHz (the frequencies used to communicate by The Oaks and the still-unidentified subject) to a vehicle in 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 Mr. Bondy and explained that a refusal to allow an inspection could result in a fine. Then the agent asked Mr. Bondy if the agent could perform an inspection of all radios in his vehicle. Initially, Mr. 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 Mr. Bondy had in his vehicle.¹²

4. In the *Forfeiture Order*, the Enforcement Bureau's Western Region (Region) considered Mr. Bondy's arguments that this was simply a case of mistaken identity, that Mr. Bondy did not own or operate any equipment on Oat Mountain, 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.¹³ The Region

(Continued from previous page)

authority to operate on frequency 466.375 MHz. As a GMRS licensee under Part 95 of the Rules, Mr. Bondy has no authorization to operate on frequencies 461.375 MHz and 466.375 MHz, the frequencies licensed to The Oaks, or frequencies 464.7125 MHz and 462.8375 MHz, the frequencies that the Los Angeles agent located Mr. Bondy transmitting on during the investigation on March 6, 2009. See 47 C.F.R. § 95.29 (Channels available).

¹⁰ *Forfeiture Order*, 26 FCC Rcd at 7840–7841.

¹¹ 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 frequencies 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 frequencies 461.375 MHz and 466.375 MHz repeater pair, and that The Oaks had to apply to the FCC to cancel the frequencies 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. See *id.*, 26 FCC Rcd at 7841.

¹² *Id.*

¹³ *Id.*, 26 FCC Rcd at 7842–7845.

found no merit in Mr. Bondy's arguments and assessed a forfeiture of \$24,000.¹⁴ In his Petition, Mr. Bondy reiterates his arguments that he did not commit the violations and that he did not refuse to allow the inspection, and he adds that there is no proof that he caused the interference or refused to allow the inspection.¹⁵ Consequently, Mr. Bondy argues, the *Forfeiture Order* should be reversed.¹⁶

III. DISCUSSION

5. Section 405(a) of the Act¹⁷ and Section 1.106(f) of the Rules¹⁸ require the filing of a petition for reconsideration with the Commission's Secretary in Washington, D.C. within thirty days from the date of public notice of the final action.¹⁹ In this case, public notice of the *Forfeiture Order* occurred upon release on June 6, 2011.²⁰ The thirtieth day after June 6, 2011, was July 6, 2011. Thus, Mr. Bondy should have filed his request for reconsideration with the Commission's Secretary in Washington, D.C. no later than July 6, 2011.²¹ While Mr. Bondy emailed a copy of his Petition to the Region on July 6, 2011, there is no evidence that a copy was ever received by the Secretary of the Commission. As Section 1.106(i) of the Rules explicitly states, "[p]etitions submitted only by electronic mail and petitions submitted directly to staff without submission to the Secretary shall not be considered to have been properly filed."²² Accordingly, because Mr. Bondy failed to timely file his Petition, we dismiss the Petition on procedural grounds.²³

6. We further find that even if Mr. Bondy's Petition was not procedurally defective, the Petition would fail on the merits. Reconsideration is appropriate only where the petitioner either demonstrates a material error or omission in the underlying order or raises additional facts not known or not existing until after the petitioner's last opportunity to present such matters.²⁴ A petition for reconsideration that reiterates arguments that were previously considered and rejected will be denied.²⁵

¹⁴ *Id.*

¹⁵ Petition at 1–2.

¹⁶ *Id.* at 2.

¹⁷ 47 U.S.C. § 405(a).

¹⁸ 47 C.F.R. § 1.106(f).

¹⁹ *See also* 47 C.F.R. § 1.106(i).

²⁰ *See* 47 C.F.R. § 1.4(b).

²¹ *See* 47 C.F.R. §§ 1.106(f), 1.4(j).

²² 47 C.F.R. § 1.106(i).

²³ *See Washington Broadcast Management Co., Inc.*, Memorandum Opinion and Order, 15 FCC Rcd 6607 (2000); *Bay Broadcasting Corporation*, Memorandum Opinion and Order, 15 FCC Rcd 23449 (Enf. Bur. 2000).

²⁴ *See* 47 C.F.R. § 1.106(c); *EZ Sacramento, Inc.*, Memorandum Opinion and Order, 15 FCC Rcd 18257 (Enf. Bur. 2000), *citing WWIZ, Inc.*, Memorandum Opinion and Order, 37 FCC 685, 686 (1964), *aff'd sub. nom. Lorain Journal Co. v. FCC*, 351 F.2d 824 (D.C. Cir. 1965), *cert. denied*, 383 U.S. 967 (1966).

²⁵ *EZ Sacramento, Inc.*, 15 FCC Rcd at 18257.

7. Mr. Bondy raises no new issues that require discussion here.²⁶ He simply reiterates his claims that there is no evidence that he was responsible for the violations with which he was charged.²⁷ We disagree. As explained in the *Forfeiture Order*,²⁸ a Los Angeles agent, using direction-finding techniques, located Mr. Bondy as he transmitted on frequencies 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 Mr. Bondy was operating. Mr. Bondy was then identified by a Ventura County police officer, a fact that Mr. Bondy does not dispute. While the Los Angeles agent was attempting to locate Mr. Bondy, The Oaks personnel recorded their transmissions with Mr. Bondy in which Mr. Bondy ordered them to vacate frequencies 461.375 MHz and 466.375 MHz while he was transmitting on frequencies 464.7125 MHz and 462.8375 MHz. Mr. 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. Thus, the *Forfeiture Order* is supported by evidence that Mr. Bondy transmitted on frequencies that he had no authorization for and announced, and engaged in, intentional interference to The Oaks' operations on frequencies 461.375 MHz and 466.375 MHz. Consequently, we find there is sufficient evidence that Mr. Bondy willfully and repeatedly violated Sections 301 and 333 of the Act and Section 95.183(a)(5) of the Rules.

8. We also find that there is sufficient evidence that Mr. Bondy willfully violated Section 303(n) of the Act, and Section 95.115 of the Rules, by refusing to allow an inspection of his radio equipment by FCC personnel. After the Los Angeles agent requested an inspection of Mr. Bondy's radio equipment on March 6, 2009, Mr. Bondy initially refused an inspection, then agreed, then refused a full inspection. Mr. Bondy believed that the agent was specifically focused on one of Mr. Bondy's handheld radios to determine which frequencies were programmed into the device, which was not readily apparent given that Mr. Bondy had programmed channel names, rather than frequencies, into the handheld. The agent reported that there were other radios in the car that he was unable to inspect, including a console mount radio, a handheld radio, and a mobile radio unit in the back seat.²⁹ The agent's attempt to determine the actual frequency programmed into the handheld device was thwarted by Mr. Bondy, and Mr. Bondy indicated to the agent that he could not conduct a full and complete inspection of all of the radio equipment in the vehicle. Because of Mr. Bondy's refusal, the agent did not inspect those radios.³⁰

9. Therefore, we find that the Petition provides no basis for further reduction or cancellation of the monetary forfeiture assessed against Mr. Bondy, even if his Petition had been timely filed, and affirm the *Forfeiture Order*.

²⁶ Mr. Bondy argues that enforcement action should be taken against The Oaks for operating on certain frequencies without an authorization. Petition at 1. This fact was noted in the *Forfeiture Order*, along with the explanation for the usage. *Forfeiture Order*, 26 FCC Rcd at 7841 n.5. ("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.")

²⁷ We find irrelevant Mr. Bondy's claim that he did not own or lease property on Oat Mountain. Petition at 2. As explained in the *Forfeiture Order*, the Los Angeles Office determined that while the transmissions emanating from Oat Mountain were causing the intentional interference, Mr. Bondy was sitting in his car, as located by the Los Angeles Office, explaining to The Oaks personnel why he was jamming them and why they had to leave the frequencies being interfered with from Oat Mountain. *Forfeiture Order*, 26 FCC Rcd at 7841.

²⁸ *Id.*, 26 FCC Rcd at 7842-7844.

²⁹ *Id.*, 26 FCC Rcd at 7841 n.6.

³⁰ *Id.*, 26 FCC Rcd at 7844.

IV. ORDERING CLAUSES

10. Accordingly, **IT IS ORDERED** that, pursuant to Section 405 of the Communications Act of 1934, as amended,³¹ and Section 1.106 of the Rules,³² that the Petition for Reconsideration filed by Kevin W. Bondy **IS DISMISSED** and the *Forfeiture Order IS AFFIRMED*.

11. **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, Kevin W. Bondy **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of **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.³³

12. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules immediately and no later than thirty (30) calendar days after the release date of this Order on Review.³⁴ If the forfeiture is not paid within the period specified, the case may be referred to the U.S. Department of Justice for enforcement of the forfeiture pursuant to Section 504(a) of the Act.³⁵ Kevin W. Bondy shall send electronic notification of payment to WR-Response@fcc.gov on the date said payment is made.

13. The payment must be made by check or similar instrument, wire transfer, or credit card, and must include the NAL/Account number and FRN referenced above. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted.³⁶ When completing the FCC Form 159, enter the Account Number in block number 23A (call sign/other ID) and enter the letters "FORF" in block number 24A (payment type code). Below are additional instructions you should follow based on the form of payment you select:

- Payment by check or money order must be made payable to the order of the Federal Communications Commission. Such payments (along with the completed Form 159) must be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.
- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. To complete the wire transfer and ensure appropriate crediting of the wired funds, a completed Form 159 must be faxed to U.S. Bank at (314) 418-4232 on the same business day the wire transfer is initiated.
- Payment by credit card must be made by providing the required credit card information on FCC Form 159 and signing and dating the Form 159 to authorize the credit card payment. The completed Form 159 must then be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank –

³¹ 47 U.S.C. § 405.

³² 47 C.F.R. § 1.106.

³³ 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).

³⁴ 47 C.F.R. § 1.80.

³⁵ 47 U.S.C. § 504(a).

³⁶ An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.

14. Any request for full payment under an installment plan should be sent to: Chief Financial Officer—Financial Operations, Federal Communications Commission, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554.³⁷ If you have questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone, 1-877-480-3201, or by e-mail, ARINQUIRIES@fcc.gov.

15. **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 Kevin W. Bondy, at his address of record.

FEDERAL COMMUNICATIONS COMMISSION

P. Michele Ellison
Chief, Enforcement Bureau

³⁷ See 47 C.F.R. § 1.1914.