

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

In the Matter of)	
)	
Terry L. Van Volkenburg)	File No.: EB-FIELDSCR-12-00004202
)	NAL/Acct. No.: 201332700001
Cocoa, Florida)	FRN: 0002825925

ORDER

Adopted: March 19, 2014

Released: March 19, 2014

By the Regional Director, South Central Region, Enforcement Bureau:

1. In this Order, we adopt the attached Consent Decree entered into between the Enforcement Bureau of the Federal Communications Commission (Bureau) and Terry L. Van Volkenburg. The Consent Decree terminates the investigation and Notice of Apparent Liability for Forfeiture issued by the Bureau of possible violations of Sections 301 and 333 of the Communications Act of 1934, as amended,¹ concerning Mr. Van Volkenburg's operation of a radio transmitter on the frequency 465.300 MHz.

2. The Bureau and Mr. Van Volkenburg have negotiated the terms of a Consent Decree that resolves this matter. A copy of the Consent Decree is attached hereto and incorporated herein by reference.

3. After reviewing the terms of the Consent Decree and evaluating the facts before us, we find that the public interest would be served by adopting the Consent Decree, terminating the investigation.

4. Accordingly, **IT IS ORDERED**, pursuant to Section 4(i) and 503(b) of the Communications Act of 1934, as amended,² and Sections 0.111 and 0.311 of the Commission's rules,³ the Consent Decree attached to the Order **IS ADOPTED**.

5. **IT IS FURTHER ORDERED** that the above-captioned investigation **IS TERMINATED**.

¹ 47 U.S.C. §§ 301, 333.

² 47 U.S.C. §§ 154(i), 503(b).

³ 47 U.S.C. §§ 0.111, 0.311.

6. **IT IS FURTHER ORDERED** that a copy of this Order and Consent Decree shall be sent by first class mail and certified mail, return receipt requested to Terry L. Van Volkenburg at his address of record.

FEDERAL COMMUNICATIONS COMMISSION

Dennis P. Carlton
Regional Director
South Central Region
Enforcement Bureau

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CONSENT DECREE

1. The Enforcement Bureau of the Federal Communications Commission (Bureau), by its authorized representative, and Terry L. Van Volkenburg, hereby enter into this Consent Decree for the purpose of terminating the Bureau's investigation into Mr. Van Volkenburg's violations of Sections 301 and 333 of the Communications Act of 1934, as amended.¹

I. DEFINITIONS

2. For the purposes of this Consent Decree, the following definitions shall apply:
- (a) "Act" means the Communications Act of 1934, as amended, 47 U.S.C. § 151 *et seq.*
 - (b) "Adopting Order" means an order of the Bureau adopting the terms of this Consent Decree without change, addition, deletion, or modification.
 - (c) "Bureau" means the Enforcement Bureau of the Federal Communications Commission.
 - (d) "Commission" and "FCC" mean the Federal Communications Commission and all of its bureaus and offices.
 - (e) "Communications Laws" means collectively, the Act, the Rules, and the published and promulgated orders and decisions of the Commission to which Mr. Van Volkenburg is subject by virtue of his operation of radio transmitting equipment.
 - (f) "Effective Date" means the date on which the Bureau releases the Adopting Order.
 - (g) "Investigation" means the investigation commenced by the Bureau regarding Mr. Van Volkenburg's operation of a radio transmitter on the frequency 465.300 MHz and interfering with licensed communications, which resulted in the issuance of a Notice of Apparent Liability for Forfeiture, 28 FCC Rcd 1927 (NAL).²
 - (h) "Parties" means Mr. Van Volkenburg and the Bureau, each of which is a "Party."

¹ 47 U.S.C. §§ 301, 333.

² *Terry L. Van Volkenburg*, Notice of Apparent Liability for Forfeiture, 28 FCC Rcd 1927 (Enf. Bur. 2013).

- (i) “Rules” means the Commission’s regulations found in Title 47 of the Code of Federal Regulations.

II. BACKGROUND

3. 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 granted under the provisions of the Act.³ 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 this Act or operated by the United States Government.”⁴

4. In September 2012, the Bureau initiated an investigation in response to a complaint of radio interference from the Brevard County Sheriff’s Department. The Bureau subsequently determined that Mr. Van Volkenburg operated a radio transmitter on the frequency 465.300 MHz, without a license, from his residence in Cocoa, Florida, which interfered with the licensed wireless radio communications system used by the Sheriff’s Department in the county jail. On March 1, 2013, the Enforcement Bureau issued the *NAL* to Mr. Van Volkenburg and found him apparently liable for a \$25,000 forfeiture for his apparent violations of Sections 301 and 333 of the Act.

5. In response to the *NAL*, Mr. Van Volkenburg provided financial documentation demonstrating that he is unable to pay the proposed forfeiture.

III. TERMS OF AGREEMENT

6. **Adopting Order.** The Parties agree that the provisions of this Consent Decree shall be subject to final approval by the Bureau by incorporation of such provisions by reference in the Adopting Order.

7. **Jurisdiction.** Mr. Van Volkenburg agrees that the Bureau has jurisdiction over him and the matters contained in this Consent Decree and has the authority to enter into and adopt this Consent Decree.

8. **Effective Date; Violations.** The Parties agree that this Consent Decree shall become effective on the Effective Date. As of the Effective Date, the Adopting Order and this Consent Decree shall have the same force and effect as any other order of the Commission. Any violation of the Adopting Order or of the terms of this Consent Decree shall constitute a separate violation of a Commission order, entitling the Commission to exercise any rights and remedies attendant to the enforcement of a Commission order.

9. **Termination of Investigation.** In express reliance on the covenants and representations in this Consent Decree and to avoid further expenditure of public resources, the Bureau agrees to terminate the Investigation. In consideration for the termination of the Investigation, Mr. Van Volkenburg agrees to the terms, conditions, and procedures contained herein. The Bureau further agrees that in the absence of new material evidence, the Bureau will not use the facts developed in the Investigation through the Effective Date, or the existence of this Consent Decree, to institute on its own

³ 47 U.S.C. § 301.

⁴ 47 U.S.C. § 333.

motion any new proceeding, formal or informal, or take any action on its own motion against Mr. Van Volkenburg concerning the matters that were the subject of the Investigation.

10. **Relinquishment of Amateur License.** Mr. Van Volkenburg holds an amateur license (call sign KC5RF), which did not authorize him to operate on the frequency 465.300 MHz. In consideration for the termination of the Investigation, Mr. Van Volkenburg agrees to relinquish his amateur license. Mr. Van Volkenburg provided a signed letter requesting the Commission cancel his amateur license prior to signing this Consent Decree.

11. **Voluntary Contribution.** Mr. Van Volkenburg agrees that he will make a voluntary contribution to the United States Treasury in the amount of one thousand dollars (\$1,000) (“Voluntary Contribution”) in ten equal installments (each an Installment Payment). The first Installment Payment of one hundred dollars (\$100) must be made within thirty (30) calendar days after the Effective Date. Each successive Installment Payment of one hundred dollars (\$100) shall be due on the first day of the next nine (9) months following the initial Installment Payment. Mr. Van Volkenburg acknowledges and agrees that upon execution of this Consent Decree the Voluntary Contribution and each Installment Payment shall become a “Claim” or “Debt” as defined in 31 U.S.C. § 3701(b)(1). Upon an Event of Default (as defined below), all procedures for collection as permitted by law may, at the Commission’s discretion, be initiated. In addition, Mr. Van Volkenburg agrees that he will make the first and all subsequent Installment Payments in United States Dollars without further demand or notice by the dates specified above. Installment Payments must be made by check or similar instrument, wire transfer, or credit card, and must include the NAL/Account Number and FRN referenced above. Mr. Van Volkenburg shall also send electronic notification of each Installment Payment on the date said payment is made to SCR-Response@fcc.gov. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted. 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 – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.

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.

12. **Event of Default.** Mr. Van Volkenburg agrees that an Event of Default shall occur upon his failure to pay the full amount of any Installment Payment on or before the due date specified in this Consent Decree.

13. **Interest, Charges for Collection, and Acceleration of Maturity Date.** After an Event of Default has occurred under this Consent Decree, the then unpaid amount of the Voluntary Contribution shall accrue interest, computed using the rate of the U.S. Prime Rate in effect on the date of the Event of Default plus 4.75 percent, from the date of the Event of Default until payment in full. Upon an Event of Default, the then unpaid amount of the Voluntary Contribution, together with interest, as aforesaid, any penalties permitted and/or required by the law, including but not limited to interest and penalties permitted under 31 U.S.C. § 3717 and administrative charge(s), plus the costs of collection, litigation, and attorneys' fees, shall become immediately due and payable, without notice, presentment, demand, protest, or notice of protest of any kind, all of which are waived by Mr. Van Volkenburg.

14. **Waivers.** Mr. Van Volkenburg waives any and all rights he may have to seek administrative or judicial reconsideration, review, appeal, or stay, or to otherwise challenge or contest the validity of this Consent Decree and the Adopting Order, provided the Bureau issues an Adopting Order as defined herein. Mr. Van Volkenburg shall retain the right to challenge Commission interpretation of the Consent Decree or any terms contained herein. If either Party (or the United States on behalf of the Commission) brings a judicial action to enforce the terms of the Adopting Order, neither Mr. Van Volkenburg nor the Commission shall contest the validity of the Consent Decree or of the Adopting Order, and Mr. Van Volkenburg shall waive any statutory right to a trial *de novo*. Mr. Van Volkenburg hereby agrees to waive any claims he may have under the Equal Access to Justice Act, 5 U.S.C. § 504 and 47 C.F.R. § 1.1501 *et seq.*, relating to the matters addressed in this Consent Decree.

15. **Invalidity.** In the event that this Consent Decree in its entirety is rendered invalid by any court of competent jurisdiction, it shall become null and void and may not be used in any manner in any legal proceeding.

16. **Subsequent Rule or Order.** The Parties agree that if any provision of the Consent Decree differs from any subsequent Rule or order adopted by the Commission (except an order specifically intended to revise the terms of this Consent Decree to which Mr. Van Volkenburg does not expressly consent) regarding the same subject matter, that provision will be superseded by such Rule or Commission order.

17. **Final Settlement.** The Parties agree and acknowledge that this Consent Decree shall constitute a final settlement between the Parties with respect to the Investigation. Mr. Van Volkenburg admits, solely for the purpose of this Consent Decree and for Commission civil enforcement purposes, and in express reliance on the provisions of paragraph 9 herein, that his radio operations on the frequency 465.300 MHz, which were the subject of the Investigation, violated the Communications Laws.

18. **Modifications.** This Consent Decree cannot be modified without the advance written consent of both Parties.

19. **Paragraph Headings.** The headings of the paragraphs in this Consent Decree are inserted for convenience only and are not intended to affect the meaning or interpretation of this Consent Decree.

20. **Authorized Representative.** The FCC signatory represents that he is signing this Consent Decree in his official capacity and that he is authorized to execute this Consent Decree.

21. **Counterparts.** This Consent Decree may be signed in any number of counterparts (including by facsimile), each of which, when executed and delivered, shall be an original, and all of which counterparts together shall constitute one and the same fully executed instrument.

Dennis P. Carlton
Regional Director
South Central Region
Enforcement Bureau

Date

Terry L. Van Volkenburg

Date