
Federal Communications Commission

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

In the Matter of

Kevin W. Bondy

Licensee of WQGX752
Encino, California

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File No.: EB-09-LA-0026

NAL/Acct. No.: 200932900004
FRN: 0016490633

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: May 14, 2009

By the District Director Los Angeles Office, Western Region, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture ("NAL"), we find that Kevin W. Bondy ("Bondy"), licensee of GMRS station WQGX752, in Encino, California, apparently willfully and repeatedly violated 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 by engaging in unlicensed radio operation and intentional interference to licensed radio operations; and apparently willfully violated Section 303(n) of the Act³ and Section 95.115 of the Rules⁴ by failing to allow an inspection of his radio equipment by Commission personnel. We conclude, pursuant to Section 503(b) of the Communications Act of 1934, as amended ("Act"),⁵ that Mr. Bondy is apparently liable for a forfeiture in the amount of twenty-four thousand dollars (\$24,000).

II. BACKGROUND

2. On February 25, 2009, the Los Angeles Office received a complaint from the security manager for The Oaks Shopping Center ("The Oaks"), 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. On February 26, 2009, an agent from the Enforcement Bureau's Los Angeles Office contacted the security manager regarding the complaint. The security manager stated that someone was intentionally interfering with their maintenance operations on 462.525/467.525 MHz and their security operations on 461.375/466.375 MHz. The security manager also stated that this person was harassing

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.

⁵ 47 U.S.C. § 503(b).

stores in The Oaks. According to the security manager, the person in question had told The Oaks to stop using 461.375MHz, their security repeater input frequency.

4. On March 5, 2009, the Los Angeles agent, using a mobile direction finding (“MDF”) vehicle, located the source of pulsating signals on 461.375/466.375 MHz, apparently intended to interfere with normal transmissions on those frequencies, to a repeater located within a secured radio communications facility on Oat Mountain in the Santa Susana Mountains. The agent observed that the radio equipment which was the source of the pulsating signals, included a beam antenna pointed in the direction of Thousand Oaks.

5. On March 6, 2009, the agent monitored 461.375/466.375 MHz in the vicinity of The Oaks and observed pulsating signals apparently designed to interfere with 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 attempted to locate the originating subject source of the transmissions while personnel from The Oaks spoke to the unknown operator on 464.7125 MHz and 462.8375 MHz.⁶ The Los Angeles agent instructed The Oaks personnel to keep the subject talking for as long as possible so that the agent could locate the origin of the transmissions.

6. While the Los Angeles agent attempted to locate the source of the transmissions on 464.7125 MHz and 462.8375 MHz, The Oaks personnel spoke to the subject. During this time, 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. The subject then told Oaks personnel that he had been “jamming” the 461.375/466.375 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 461.375/466.375 MHz repeater pair and that The Oaks had to apply to the FCC to cancel the 461.375/466.375 MHz repeater pair and request a new frequency pair because “we need the channel.” The subject said that he gave The Oaks three weeks to vacate the frequencies but The Oaks did not, so “this is what we’ve 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 their license.

7. Later on March 6, 2009, at approximately 7:30 p.m., the Los Angeles agent, using a MDF vehicle, located the originating source of the transmissions on 464.7125 MHz and 462.8375 MHz 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 he could perform an inspection of all radios in his vehicle. Initially, Bondy refused to allow an inspection, then later agreed to allow an inspection, then refused again.⁷ Bondy’s refusal was witnessed by Ventura County Sheriff’s Department deputies.

8. 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.

⁶ We note that The Oaks had no authorization to operate on 464.7125 MHz and 462.8375 MHz, however, they used those frequencies to communicate with the subject, and other personnel, because of the continual jamming of their authorized frequencies.

⁷ The agent observed that the vehicle contained a console mount radio, a hand handle 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.

III. DISCUSSION

9. Section 503(b) of the Act provides that any person who willfully or repeatedly fails to comply substantially with the terms and conditions of any license, or willfully or repeatedly fails to comply with any of the provisions of the Act or of any rule, regulation or order issued by the Commission thereunder, shall be liable for a forfeiture penalty. The term "willful" as used in Section 503(b) has been interpreted to mean simply that the acts or omissions are committed knowingly.⁸ The term "repeated" means the commission or omission of such act more than once or for more than one day.⁹

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."¹⁰ Although Bondy is a General Mobile Radio Service (GMRS) licensee under Part 95 of the Rules, he has no authorization to operate on 461.375 MHz, 466.375 MHz, 464.7125 MHz or 462.8375 MHz. On March 6, 2009, Bondy admitted during his transmissions that he was aware of which frequencies he was operating on, therefore, his violation was willful. The violation occurred on more than one day, therefore, it was repeated. Based on the evidence before us, we find that Bondy apparently willfully and repeatedly violated Section 301 of the Act.

11. 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."¹¹ Section 95.183(a)(5) of the Rules states that a GMRS station operator must not communicate intentional interference.¹² On March 6, 2009, Bondy acknowledged in his transmissions that he was causing intentional interference to The Oaks' authorized operations on 461.375 MHz and 466.375 MHz, in a successful effort to render The Oaks' repeater unusable and to force The Oaks off their licensed channels. Bondy admitted to causing the intentional interference, therefore, the violation was willful. The violation occurred on more than one day, therefore, it was repeated. Based on the evidence before us, we find that Bondy apparently willfully and repeatedly violated Section 333 of the Act and Section 95.183(a)(5) of the Rules.

12. Section 303(n) of the Act states "the Commission . . . shall have authority to inspect all radio installations"¹³ 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."¹⁴ On March 6, 2009, an agent from the Commission's Los Angeles Office requested an inspection of Bondy's radio equipment. Bondy initially agreed to the inspection but then refused. Bondy was aware of the requirement to make his radio equipment available to the agent, as the agent explained the requirement to Bondy. Consequently, we find that Bondy apparently willfully violated Section 303(n) of the Act and Section 95.183(a)(5) of the Rules.

⁸ Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), 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...." See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

⁹ Section 312(f)(2) of the Act, 47 U.S.C. § 312(f)(2), which also applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'repeated', when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day."

¹⁰ 47 U.S.C. § 301.

¹¹ 47 U.S.C. § 333.

¹² 47 C.F.R. § 95.183(a)(5).

¹³ 47 U.S.C. § 303(n).

¹⁴ 47 C.F.R. § 95.115.

13. Pursuant to *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, ("Forfeiture Policy Statement"), and Section 1.80 of the Rules, the base forfeiture amount for unlicensed operation is \$10,000; the base forfeiture for interference is \$7,000; and the base forfeiture for failing to permit inspection is \$7,000.¹⁵ In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(E) of the Act, which include the nature, circumstances, extent, and gravity of the violations, and with respect to the violator, the degree of culpability, and history of prior offenses, ability to pay, and other such matters as justice may require.¹⁶ Applying the *Forfeiture Policy Statement*, Section 1.80, and the statutory factors to the instant case, we conclude that Bondy is apparently liable for a \$24,000 forfeiture.

IV. ORDERING CLAUSES

14. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.111, 0.311, 0.314 and 1.80 of the Commission's Rules, Kevin W. Bondy is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of twenty-four thousand dollars (\$24,000) for violations of Sections 301, 303(n), and 333 of the Communications Act of 1934, as amended, and Sections 95.115 and 95.183(a)(5) of the Rules.¹⁷

15. **IT IS FURTHER ORDERED** that, pursuant to Section 1.80 of the Commission's Rules within thirty days of the release date of this Notice of Apparent Liability for Forfeiture, Kevin W. Bondy **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

16. 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. 20554.¹⁸ 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 W. Bondy will also send electronic notification on the date said payment is made to WR-Response@fcc.gov.

17. The response, if any, must be mailed to Federal Communications Commission, Enforcement Bureau, Western Region, Los Angeles Office, 18000 Studebaker Rd., Suite 660, Cerritos, California, 90703 and must include the NAL/Acct. No. referenced in the caption. An electronic copy shall be sent to WR-Response@fcc.gov.

¹⁵ 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999); 47 C.F.R. §1.80.

¹⁶ 47 U.S.C. § 503(b)(2)(E).

¹⁷ 47 U.S.C. §§ 503(b), 301, 303(n), 333; 47 C.F.R. §§ 0.111, 0.311, 0.314, 1.80, 95.115, 95.183(a)(5).

¹⁸ See 47 C.F.R. § 1.1914.

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18. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices ("GAAP"); or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

19. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture shall be sent by Certified Mail, Return Receipt Requested, and regular mail, to Kevin W. Bondy at his address of record.

FEDERAL COMMUNICATIONS COMMISSION

Nader Haghighat
District Director
Los Angeles Office
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