
Federal Communications Commission

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

In the Matter of)	
)	
Shimmick Construction Company, Inc./)	File Number EB-09-LA-0068
Obayashi Corporation, Joint Venture)	
)	
Licensees of Stations WQER756, WQEN793,)	NAL/Acct. No.200932900007
WQJI360 & WQKG818)	FRN - 0019140391
Yorba Linda, CA)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: September, 28, 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 Shimmick Construction Company Inc./Obayashi Corporation, Joint Venture, ("Shimmick-Obayashi"), in Yorba Linda, California, licensees of stations WQER756, WQEN793, WQJI360 and WQKG818, apparently repeatedly violated Section 1.903(a) of the Commission's Rules ("Rules")¹ by failing to operate only in accordance with the rules applicable to their particular service as set forth in the Commission's Rules and with a valid authorization granted by the Commission. We conclude, pursuant to Section 503(b) of the Communications Act of 1934, as amended ("Act"),² that Shimmick-Obayashi is apparently liable for a forfeiture in the amount of four thousand dollars (\$4,000).

II. BACKGROUND

2. On May 18, 2009, and May 21, 2009, the Enforcement Bureau's Los Angeles Office received complaints that a concrete delivery company was operating numerous mobile stations in Yorba Linda, California, on 146.025 MHz which is a frequency allocated exclusively to the Amateur Radio Service.³

3. On May 26, 2009, and agent from the Los Angeles Office, using radio direction finding techniques, located transmissions on 146.025 MHz to the construction site of the Robert B. Diemer Water Treatment plant at 3972 Valley View Blvd., in Yorba Linda California. The transmissions were not identified by callsign. The transmissions monitored by the Los Angeles agent related to mixing and delivery of concrete on the construction site. The Los Angeles agent then viewed the construction site and correlated the movement of concrete trucks with associated radio transmissions on 146.025 MHz.

4. On May 27, 2009, the Los Angeles agent again used radio direction finding techniques to

¹ 47 C.F.R. § 1.903(a).

² 47 U.S.C. § 503(b).

³ 47 C.F.R. § 2.106.

positively locate the source of transmissions on 146.025 MHz, to the Robert B. Diemer Water Treatment Plant. The Los Angeles agent visited the construction site and spoke to the Shimmick-Obayashi supervisor of the on-site concrete plant who allowed the Los Angeles agent to inspect several of the handheld radios in use at the site. The Los Angeles agent confirmed that the frequency 146.025 MHz was programmed into frequency selector position #5 on numerous Motorola model CP200 portable transceivers that were being used to coordinate construction operations throughout the site. The Shimmick-Obayashi construction supervisor told the Los Angeles agent that he did not know anything about a license for the radios, but that he would immediately stop using the Amateur Radio Service frequency programmed in position #5 on the Motorola CP200 transceivers.

5. On May 28, 2009, the Los Angeles agent researched the Commission's records and determined that the two companies which had formed the joint venture Shimmick-Obayashi; Shimmick Construction Inc., and Qbayashi Corporation, were both Commission licensees. Shimmick Construction, Inc., holds Industrial Radio Service licenses WQJ1360 and WQKG818 which authorize operations nationwide, including in Yorba Linda, California, but neither of these licenses authorize use of 146.025 MHz. Obayashi Corporation holds Industrial Radio Service licenses WQER756 and WQEN793, but neither of these licenses authorizes use of 146.025 MHz. The research also revealed that the Shimmick-Obayashi joint venture, as an entity, did not hold any Commission licenses.

III. DISCUSSION

6. 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.⁴ The term "repeated" means the commission or omission of such act more than once or for more than one day.⁵

7. Section 1.903(a) of the Rules requires that stations in the Wireless Radio Services 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. On May 26 and 27, 2009, a Los Angeles agent located transmissions from Shimmick-Obayashi on 146.025 MHz emanating from mobile users at a construction site in Yorba Linda, California. At the time of the investigation, neither Shimmick-Obayashi nor the individual companies which made up the joint venture were authorized to operate on 146.025 MHz. The violation occurred for more than one day, therefore, it was repeated.

8. Based on the evidence before us, we find that Shimmick-Obayashi apparently repeatedly violated Section 1.903(a) of the Rules by failing to operate in accordance with the rules applicable to their particular service as set forth in the Commission's Rules and with a valid authorization granted by the Commission.

9. Pursuant to *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80*

⁴ 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).

⁵ 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."

of the Rules to Incorporate the Forfeiture Guidelines, ("Forfeiture Policy Statement"), and Section 1.80 of the Rules, the base forfeiture amount for use of an unauthorized frequency is \$4,000.⁶ 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.⁷ Applying the *Forfeiture Policy Statement*, Section 1.80, and the statutory factors to the instant case, we conclude that Shimmick-Obayashi is apparently liable for a \$4,000 forfeiture.

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, 0.311, 0.314 and 1.80 of the Commission's Rules, Shimmick Construction Company, Inc./Obayashi Corporation, Joint Venture is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of four thousand dollars (\$4,000) for violations of Section 1.903(a) of the Rules.⁸

11. **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, Shimmick Construction Company, Inc./Obayashi Corporation, Joint Venture **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

12. 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. 20554.⁹ Please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: ARINQUIRIES@fcc.gov with any questions regarding payment procedures. Shimmick Construction Company Inc./Obayashi Corporation, Joint Venture will also send electronic notification on the date said payment is made to WR-Response@fcc.gov.

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

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

⁷ 47 U.S.C. § 503(b)(2)(E).

⁸ 47 U.S.C. § 503(b), 47 C.F.R. §§ 0.111, 0.311, 0.314, 1.80, 1.903(a).

⁹ See 47 C.F.R. § 1.1914.

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14. 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.

15. **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 Shimmick Construction Company Inc./Obayashi Corporation, Joint Venture.

FEDERAL COMMUNICATIONS COMMISSION

Nader Haghighat
District Director,
Los Angeles District Office
Western Region
Enforcement Bureau