

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

In the Matter of)
Mr. Mark H. Fulling) NAL/Acct. No. 815KC0004
Garden City, Kansas)

FORFEITURE ORDER

Adopted: February 26, 1999

Released: March 1, 1999

By the Director, Legal Services Group,
Compliance and Information Bureau:

1. Before the Compliance and Information Bureau ("the Bureau") is a Notice of Apparent Liability ("NAL"), issued on September 2, 1998, to Mark H. Fulling of Garden City, Kansas, and the September 29, 1998, response thereto filed by his counsel. The NAL proposed imposition of a forfeiture against Mr. Fulling in the amount of \$8,000 pursuant to Section 503(b) of the Communications Act of 1934, as amended ("the Act"), 47 U.S.C. § 503(b), and Section 1.80 of the Commission's Rules ("the Rules"), 47 C.F.R. § 1.80, for the willful violation of Section 301 of the Act, 47 U.S.C. § 301. For the reasons stated below, we affirm the monetary forfeiture issued in the amount of \$8,000.

BACKGROUND

2. On August 17, 1998, the Bureau's Kansas City, Missouri Office received a complaint regarding an unlicensed radio station operating on the frequency of 102.1 MHz in Garden City, Kansas. A review of the Commission's records revealed that no authorization had been issued for an FM station to operate on frequency 102.1 MHz in Garden City, Kansas. On August 25, 1998, an agent from the Kansas City Office was dispatched to investigate the complaint. Using close-in direction finding techniques, the agent traced the signals to a residence at 503 Stoeckley Place in Garden City, Kansas. The agent determined that the station could be heard from up to seven miles from the source of the signal's transmission.

3. On August 26, 1998, the FCC agent, accompanied by a local law enforcement officer, attempted to inspect the station. They were met at the front door of the residence at 503 Stoeckley Place, Garden City, Kansas by the owner of the station, Mark H. Fulling. Mr. Fulling refused to allow the agent entry in order to inspect the station. Mr. Fulling was unable to produce any type of FCC authorization and admitted that he was operating the station without a license. Mr. Fulling informed the agent that he was operating the station with a power of nine watts and that he had been expecting a visit from the FCC as a result of the unlicensed operation. The agent issued, and had Mr. Fulling sign for the acceptance, of an FCC Form 835, which warns of the penalties for operating a radio station without a license in violation of Section 301 of the Act. After concluding that the unlicensed station was operating at a power level in excess of that

which would be permitted for non-licensed broadcasting,¹ and in light of the intentional nature of this offense, on September 2, 1998, the District Director of the Kansas City Office issued the subject NAL to Mr. Fulling in the amount of \$8,000 for the willful violation of Section 301 of the Act.

DISCUSSION

4. A written response to the NAL, dated September 29, 1998, was received by the Bureau on October 1, 1998. In the response, Mr. Fulling's attorney states that his client denies that "he has committed any willful or repeated violation of any federal telecommunications statutes or of any FCC regulations." In support of this statement, Mr. Fulling's attorney submits that the equipment used in the unlicensed operation did not exceed FCC specifications, and that operation of the station did not cause interference to the signal of any licensed radio station. We believe that Mr. Fulling's reliance on these arguments are misplaced and only serves as an admission to the violation of Section 301 of the Act. *See Stephen Paul Dunifer*, 11 FCC Rcd 718, 727 (1995) (Section 301 of the Act specifically prohibits the transmission of radio communications without a license and there is no support for the view that this licensing requirement cannot be enforced unless there is a specific showing that the unlicensed radio transmission caused or may cause harmful interference). *See also, National Broadcasting Co. v. United States*, 319 U.S. 190, 209-217 (1943). Furthermore, Mr. Fulling admitted to the FCC agent that he was operating a nine watt FM radio station without a license or other authorization from the FCC and was anticipating a visit by the FCC because of this unlicensed operation. Mr. Fulling's admission clearly demonstrates that he was intentionally operating the unlicensed radio station. Thus, it is clear that these violations were willful under the Act because they were not caused by accident or mistake.²

5. Additionally, the response states that Mr. Fulling has no intention of engaging in radio broadcasting without obtaining all required licenses and permits. The response states further that Mr. Fulling is now interested in applying for a license for a Class A commercial FM station. The fact that Mr. Fulling has apparently ceased the unlicensed operation and now wishes to operate a licensed station is commendable, however, such remedial action correcting a violation within itself does not nullify a forfeiture penalty. *See KGVL, Inc.*, 42 FCC 2d 258, 259 (1993).

6. The Kansas City Office issued the forfeiture pursuant to Section 503 of the Act and Section 1.80 of the Rules. In assessing the forfeiture amount, the Kansas City Office followed the forfeiture standards established in Section 503 of the Act and *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate Guidelines*, 12 FCC Rcd 17087 (1997), *recon. pending* ("*Policy Statement*"). 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. 47 U.S.C. § 503(b)(2)(D). Applying the *Policy Statement* and statutory factors to the instant case, as well as the

¹See Section 15.209 of the Rules, 47 C.F.R. § 15.209.

² Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which also applies to Section 503(b) of the Act, provides: "[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 or by a treaty ratified by the United States." *See Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

factors examined above, we affirm the forfeiture amount of \$8,000.

7. **ACCORDINGLY, IT IS ORDERED** that, pursuant to Section 503(b) of the Act, 47 U.S.C. § 503(b) and Section 1.80 of the Rules, 47 C.F.R. § 1.80, Mark H. Fulling **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of \$8,000 for willful violation of Section 301 of the Act, 47 U.S.C. § 301.

8. **IT IS FURTHER ORDERED** that, pursuant to Section 1.80(f) of the Rules, 47 C.F.R. §1.80(f), Mark H. Fulling shall, within thirty (30) days of the release of this Forfeiture Order, pay the amount of \$8,000. Forfeitures shall be paid by check, money order or credit card drawn on a U.S. financial institution, with the appropriate documentation, made payable to the Federal Communications Commission.³ The remittance should be marked NAL/Acct. No. 815KC0004, and mailed to the following address:

Federal Communications Commission
Post Office Box 73482
Chicago, Illinois 60673-7482

Petitions for reconsideration pursuant to Section 1.106 of the Rules, 47 C.F.R. § 1.106, or applications for review pursuant to Section 1.115 of the Rules, 47 C.F.R. § 1.115, should be sent to:

Office of the Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554
ATTN: Mail Stop 1500E3-DLH
Compliance and Information Bureau

Forfeiture penalties not paid within 30 days will be referred to the U.S. Attorney for recovery in a civil suit. 47 U.S.C. § 504(a).

9. **IT IS FURTHER ORDERED** that a copy of this Order shall be sent certified mail, return receipt requested, to Mark H. Fulling at 503 Stoeckley Place, Garden City, Kansas 67846 and his counsel.

FEDERAL COMMUNICATIONS COMMISSION

Ricardo M. Durham
Director, Legal Services Group
Compliance Division
Compliance and Information Bureau

³ Requests for payment under installment plans should be mailed to: Chief, Billings and Collections, Mail Stop 1110A2, 445 12th Street, S.W., Washington, D.C. 20554. Payment of the forfeiture in installments may be considered as a separate matter in accordance with Section 1.1914 of the Rules, 47 C.F.R. § 1.1914. Contact Chief, Billings and Collections at (202) 418-1995 for more information on payments by credit card.