

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

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|---------------------------|---|-----------------------------|
| In the Matter of |) | |
| |) | File Number: EB-06-TP-212 |
| Parker Construction, Inc. |) | |
| |) | NAL/Acct. No.: 200732700008 |
| Panama City, FL |) | |
| |) | FRN: 0015414048 |
| |) | |

FORFEITURE ORDER

Adopted: March 29, 2007

Released: April 2, 2007

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

I. INTRODUCTION

1. In this *Forfeiture Order* (“*Order*”), we issue a monetary forfeiture in the amount of ten thousand dollars (\$10,000) to Parker Construction, Inc. (“Parker”), for willful and repeated violation of Section 301 of the Communications Act of 1934, as amended (“*Act*”).¹ The noted violation involves Parker’s operation of radio transmitting equipment without a license.

II. BACKGROUND

2. On August 10, 2006, in response to a complaint of unlicensed radio activity in Panama City, Florida, agents from the Commission’s Tampa Office of the Enforcement Bureau (“Tampa Office”) investigated the area and monitored several individuals discussing business activities on frequency 145.020 MHz. The agents used a mobile direction finding vehicle to locate the source of the radio transmissions to the Smurfit-Stone Mill in Panama City, Florida. The agents interviewed the owner and supervisor of construction for Parker, a subcontractor working at the Mill. They both admitted that they had been using the radio equipment to talk with their crew at the Mill and that they had been doing so for approximately three years. The agents inspected Parker’s radio transmitters and observed that they were Icom IC-V8 handheld radios set to channel 145.02. The power output was measured at 3.5 watts. These radios are designed to operate only on Amateur Radio Service (“ARS”) frequencies for amateur radio licensee use. Based on the agents’ testing and experience with this type of equipment, the agent concluded that the signals being broadcast exceeded the limits for operation under Part 15 of the Commission’s Rules (“*Rules*”),² and, therefore, required a license. The owner/supervisor for Parker admitted that Parker did not have a license from the Commission to operate the radio transmitters.

3. On January 24, 2007, the Tampa Office issued a *Notice of Apparent Liability for Forfeiture* to Parker in the amount of ten thousand dollars (\$10,000) for the apparent willful and repeated violation of Section 301 of the *Act*.³ Parker submitted a response to the *NAL* requesting a reduction or cancellation of the proposed forfeiture.

¹ 47 U.S.C. § 301.

² Section 15.209 of the Rules provides that non-licensed broadcasting in the 88-216 MHz band is permitted only if the field strength of the transmission does not exceed 150 µV/m at three meters. 47 C.F.R. § 15.209.

³ *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200732700008 (Enf. Bur., Tampa Office, January 24,

III. DISCUSSION

4. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Communications Act of 1934, as amended,⁴ Section 1.80 of the Rules,⁵ and *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087 (1997), recon. denied, 15 FCC Rcd 303 (1999) ("*Forfeiture Policy Statement*"). In examining Parker's response, 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.⁶

5. Section 301 of the Act requires 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. The Table of Frequency Allocations incorporated in Section 2.106 of the Rules states that 144-146 MHz is allocated to the Amateur Band and is governed by Part 97 of the Rules.⁷ ARS station apparatus must be under the physical control of a person named on an amateur *radio* license grant "before the station may transmit on any amateur service frequency ..."⁸ On August 10, 2006, Parker admitted that it had been operating amateur radio transmitters on frequency 145.020 MHz without an Amateur license that day and for approximately the past three years. Based on the evidence before us, we find that Parker willfully⁹ and repeatedly¹⁰ violated Section 301 of the Act by operating radio transmitting equipment on 145.020 MHz without a Commission authorization.

6. In its response to the *NAL*, Parker requests a reduction, because it didn't know that its ARS radios required a license and that it ceased using them immediately after the inspection. Parker states that it obtained a license in the Industrial/Business Pool service and purchased new radios on August 16, 2006.¹¹ However, corrective action taken to come into compliance with the Rules after an

2007) ("*NAL*").

⁴ 47 U.S.C. § 503(b).

⁵ 47 C.F.R. § 1.80.

⁶ 47 U.S.C. § 503(b)(2)(D).

⁷ 47 C.F.R. § 2.106.

⁸ 47 C.F.R. § 97.5(a).

⁹ 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,' ... 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).

¹⁰ The 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." 47 U.S.C. § 312(f)(2).

¹¹ Parker also states that it spoke to Commission staff after it applied for its license, explained the situation, and thought that no further action against it was forthcoming. As part of the license application process, Commission staff contacted Parker and inquired into its past practices. Commission staff, at that time, however, made no assurances or statements regarding any enforcement actions.

inspection is expected, and does not nullify or mitigate any prior forfeitures or violations.¹² Moreover, Parker need not have intended to violate the Rules for its violation to be willful.¹³

7. We have examined Parker's response to the *NAL* pursuant to the statutory factors above, and in conjunction with the *Forfeiture Policy Statement*. As a result of our review, we conclude that Parker willfully and repeatedly violated Section 301 of the Act and that no reduction of the proposed \$10,000 forfeiture is warranted.

IV. ORDERING CLAUSES

8. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.111, 0.311 and 1.80(f)(4) of the Commission's Rules, Parker Construction, Inc. **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of ten thousand dollars (\$10,000) for violation of Section 301 of the Act.¹⁴

9. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within 30 days of the release of this *Order*. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.¹⁵ 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/Acct. No. and FRN No. referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 358340, Pittsburgh, PA 15251-8340. Payment by overnight mail may be sent to Mellon Bank /LB 358340, 500 Ross Street, Room 1540670, Pittsburgh, PA 15251. Payment by wire transfer may be made to ABA Number 043000261, receiving bank Mellon Bank, and account number 911-6106. Requests for full payment under an installment plan should be sent to: Associate Managing Director, Financial Operations, 445 12th Street, S.W., Room 1A625, Washington, D.C. 20554.¹⁶

10. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by First Class and Certified Mail Return Receipt Requested to Parker Construction, Inc. at its address of record.

FEDERAL COMMUNICATIONS COMMISSION

Dennis P. Carlton
Regional Director, South Central Region
Enforcement Bureau

¹² See *Seawest Yacht Brokers*, Forfeiture Order, 9 FCC Rcd 6099 (1994).

¹³ See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

¹⁴ 47 U.S.C. §§ 301, 503(b); 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4).

¹⁵ 47 U.S.C. § 504(a).

¹⁶ See 47 C.F.R. § 1.1914.