

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

In the Matter of)
Danny R. McKinney) File Number EB-04-OR-186
Bigelow, Arkansas) NAL/Acct. No.200532620003
) FRN 0012802120
)

FORFEITURE ORDER

Adopted: June 6, 2005

Released: June 8, 2005

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 one thousand dollars (\$1,000) to Danny R. McKinney for willful violation of Section 301 of the Communications Act of 1934, as amended ("Act").

II. BACKGROUND

2. On March 5, 2004, the Commission's New Orleans Office of the Enforcement Bureau ("New Orleans Office") received a complaint about the misuse of VHF marine radios along the Arkansas River in Arkansas.

3. On November 13, 2004, the opening day of deer hunting season, agents from the New Orleans Office used radio direction finding techniques to determine that the source of a signal on 156.325 MHz (VHF marine channel 66) was coming from a 1994 green GEO Tracker in Pulaski County, Arkansas.

4. On December 13, 2004, the New Orleans Office sent Mr. McKinney a warning letter for unlicensed operation of a transmitter on 156.325 MHz. On December 23, 2004, the New Orleans Office received a reply to the warning letter from Mr. McKinney in which he admitted operating a radio

147 U.S.C. § 301.

transmitter on 156.325 MHz without a license to talk to a friend, the captain of the motor vessel, Sioux, and occasionally other people. He also stated that he had purchased the radio approximately two years ago.

5. On April 6, 2005, the New Orleans Office issued a *Notice of Apparent Liability for Forfeiture* to Mr. McKinney in the amount of ten thousand dollars (\$10,000) for the apparent willful violation of Section 301 of the Act.² Mr. McKinney filed a response to the *NAL* on May 6, 2005, requesting cancellation or reduction of the forfeiture based on inability to pay.

III. DISCUSSION

6. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Act,³ Section 1.80 of the Commission's Rules ("Rules"),⁴ 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 Mr. McKinney'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.⁵

7. 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. The frequency 156.325 MHz has been assigned to VHF Marine Channel 66 for maritime services.⁶ Section 80.13 of the Rules states that stations in the maritime service must be licensed either individually or by fleet.⁷ Ship stations may also be licensed by rule under certain circumstances without an individual license.⁸ However, ship stations are defined as those radio stations located on vessels not permanently moored.⁹ On November 13, 2004, agents from the New Orleans Office determined that Mr. McKinney operated a radio transmitter on 156.325 MHz, VHF marine channel 66, from his land-based vehicle without a license. Mr. McKinney admitted that he operated a radio transmitter without Commission authorization. Thus, based on the evidence, we find that Mr. McKinney willfully¹⁰ violated Section 301 of the Act by operating a radio transmitter without the

²*Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200532620003 (Enf. Bur., New Orleans Office, April 6, 2005) ("*NAL*").

³47 U.S.C. § 503(b).

⁴47 C.F.R. § 1.80.

⁵47 U.S.C. § 503(b)(2)(D).

⁶See 47 C.F.R. § 80.373(f).

⁷47 C.F.R. § 80.13.

⁸47 C.F.R. § 80.13(c).

⁹See 47 C.F.R. §§ 80.5, 80.13.

¹⁰Section 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 (continued....)

required authorization from the Commission on November 13, 2004.

8. In his response to the *NAL*, Mr. McKinney asserts that a \$10,000 forfeiture would produce a financial hardship and requests that the forfeiture be cancelled or significantly reduced. The Commission has determined that, in general, an entity's gross revenues are the best indicator of its ability to pay a forfeiture.¹¹ After reviewing Mr. McKinney's tax returns, we conclude that a reduction of the forfeiture to \$1,000 would be appropriate.

9. Mr. McKinney also requested a reduction or cancellation of the forfeiture, because he removed the radio from his vehicle and is willing to turn over the radio to the Commission. Mr. McKinney's remedial actions to cease operation of the unlicensed transmissions, however, are expected and do not warrant a cancellation or reduction in the forfeiture amount.¹² Finally, Mr. McKinney asked for a reduction in the forfeiture, because his use of the radio was limited and he did not intend to cause interference to other users. As stated above, a violator need not intend to violate the Act or the Rules or to cause interference for a violation to be willful. Accordingly, we find no basis to reduce the forfeiture below \$1,000.

10. We have examined Mr. McKinney'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 Mr. McKinney willfully violated Section 301 of the Act. Although cancellation of the proposed monetary forfeiture is not warranted, reduction of the forfeiture amount to \$1,000 is appropriate based on Mr. McKinney's demonstrated inability to pay.

IV. ORDERING CLAUSES

11. 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,¹³ Danny R. McKinney **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of one thousand dollars (\$1,000) for willfully violating Section 301 of the Act.

12. 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.¹⁴ Payment of the forfeiture must be made by check or similar instrument, payable to the order of the

(Continued from previous page) _____

regulation of the Commission authorized by this Act" See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

¹¹See *PJB Communications of Virginia, Inc.*, 7 FCC Rcd 2088, 2089 (1992) (forfeiture not deemed excessive where it represented approximately 2.02 percent of the violator's gross revenues); *Local Long Distance, Inc.*, 16 FCC Rcd 24385 (2000) (forfeiture not deemed excessive where it represented approximately 7.9 percent of the violator's gross revenues); *Hoosier Broadcasting Corporation*, 15 FCC Rcd 8640 (2002) (forfeiture not deemed excessive where it represented approximately 7.6 percent of the violator's gross revenues).

¹²See *AT&T Wireless Services, Inc.*, 17 FCC Rcd 21861, 21864-75 (2002); *Sonderling Broadcasting Corp.*, 69 FCC 2d 289, 291 (1978); *Odino Joseph*, 18 FCC Rcd 16522, 16524, para. 8 (Enf. Bur. 2003); *South Central Communications Corp.*, 18 FCC Rcd 700, 702-03, para. 9 (Enf. Bur. 2003); *Northeast Utilities*, 17 FCC Rcd 4115, 4117, para. 13 (Enf. Bur. 2002).

¹³47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4).

¹⁴47 U.S.C. § 504(a).

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: Chief, Revenue and Receivables Group, 445 12th Street, S.W., Washington, D.C. 20554.¹⁵

13. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by First Class and Certified Mail Return Receipt Requested to Danny R. McKinney at his address of record.

FEDERAL COMMUNICATIONS COMMISSION

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

¹⁵See 47 C.F.R. § 1.1914.