

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

In the Matter of

Danny Lee Coffield NAL/Acct. No. 415LA0007
Lakewood, California

ORDER

Adopted: February 7, 1996; Released: February 15, 1996

By the Chief, Compliance and Information Bureau:¹

I. INTRODUCTION

1. In this Order we address the Petition for Reconsideration filed by Mr. Danny Lee Coffield (Petitioner), pursuant to Section 1.106 of the Commission's rules, 47 C.F.R. § 1.106. Petitioner requests review of a monetary forfeiture of \$2,000 issued by the Los Angeles Field Office, Compliance and Information Bureau, under authority of Section 503(b) of the Communications Act of 1934, as amended (Act), 47 U.S.C. § 503(b), for willfully violating Section 301 of the Act, 47 U.S.C. § 301. For the reasons noted below, we affirm the determination by the Field Office.

II. BACKGROUND

2. On October 20, 1993, the Los Angeles Field Office issued to the petitioner a Notice of Apparent Liability (NAL) for \$2,000 for operating an unlicensed radio station in violation of Section 301 of the Act. FCC Agents discovered the petitioner operating a radio station on 27.7744 MHz on September 29, 1993, from 8:21 pm to 8:29 pm PSDT, without authorization from the Commission. The FCC Agents using close-in direction finding techniques traced the petitioner's unauthorized radio transmissions to his residence. The Agents then inspected the premises and found the petitioner operating a modified Cobra 2000GTL transceiver. The modification made to the transceiver voided the type acceptance previously issued by the Commission, and the petitioner's use of a modified transceiver violated Section 95.409 of the Commission's rules, 47 C.F.R. § 95.409.

3. The petitioner responded to the NAL on October 27, 1993. The Los Angeles Field Office found the petitioner's arguments unpersuasive and issued a Notice of Forfeiture (NOF) for \$2,000. Petitioner then filed the Petition for Reconsideration now before us and asks for cancellation of the forfeiture.

III. DISCUSSION

4. The petitioner presents three new arguments that were not previously addressed in the NAL and NOF. First, the petitioner claims that he was not shown proper identification by the FCC Agents who conducted the investigation and that his constitutional rights therefore were violated. The records in this case indicate, however, that when the FCC Agents approached Mr. Coffield, they identified themselves as FCC Agents and produced proper identification. This is a well-established practice by FCC Agents prior to conducting an inspection and there is no evidence to indicate that the Agents departed from their established practice.

5. Second, the petitioner claims that, rather than being fined, he has the right under FCC rules to remove the unauthorized frequencies from the transceiver. Removal of unauthorized frequencies from a previously type accepted radio does not restore the radio's type acceptance or change the nature of the violation at issue. Once a CB radio's type acceptance becomes void as a result of modification to transmit on unauthorized frequencies, the only way to gain valid type acceptance is to remove the frequencies and resubmit the radio for type acceptance following the procedures in Part 15 of the FCC rules, 47 C.F.R. Part 15. In any event, because the petitioner was operating on an unauthorized frequency, he was operating an unlicensed radio station in violation of the Act, 47 U.S.C. § 301. Consequently, we find petitioner's second argument unpersuasive.

6. Third, the petitioner argues that the operation on 27.7744 MHz could have been caused by radio frequency (RF) bleed. In other words, petitioner claims that he was operating legally (on an authorized CB channel) and his operation bled over onto the unauthorized frequency. The FCC Agents observed the petitioner operating on 27.7744 MHz with no indication that this operation was bleeding over from an authorized channel. Moreover, when the FCC Agents conducted an inspection of the petitioner's station, they found the radio had been modified to operate on 27.7744 MHz. Therefore, the petitioner's third claim is without merit.

7. With respect to the \$2,000 forfeiture, we note that the Los Angeles Field Office followed the forfeiture guidelines established in the Commission's *Policy Statements, Standards for Assessing Forfeitures, (Policy Statement)*, 8 FCC Rcd 6215 (1993). On July 12, 1994, the Court of Appeals for the D.C. Circuit vacated the forfeiture guidelines. *United States Telephone Assn. v. FCC*, 28 F.3d 1232 (D.C. Cir. 1994). On reconsideration, we have evaluated the forfeiture amount pursuant to the statutory guidelines set forth in Section 503 of the Act, 47 U.S.C. § 503(b)(2)(D). In particular, 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). The petitioner concedes in this case that the FCC previously warned him regarding potential penalties for unlicensed operation. Thus, the unauthorized operation on September 29, 1993,

¹ The Compliance and Information Bureau (CIB) was formerly named the Field Operations Bureau. The name change became effective on November 27, 1994.

reflects an intentional disregard of our prior warning. In these circumstances, we find that \$2,000 is an appropriate forfeiture penalty amount.

IV. ORDERING CLAUSES

8. IT IS ORDERED THAT, pursuant to Section 503(b) of the Act, 47 U.S.C. § 503(b), and Section 1.106 of the Rules, 47 C.F.R. § 1.106, the Petition for Reconsideration is DENIED.

9. IT IS FURTHER ORDERED that Mr. Danny Lee Coffield must pay the forfeiture amount of two thousand (\$2,000) within thirty (30) days of the release date of this Order, or file an Application for Review of the CIB's Order pursuant to 47 C.F.R. § 1.115. Payment may be made by check or money order payable to the Federal Communications Commission.² Please place NAL/Acct. No. 415LA0007 on the remittance and mail it to:

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

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

10. IT IS FURTHER ORDERED that a copy of this Order shall be sent to Mr. Danny Lee Coffield.

FEDERAL COMMUNICATIONS COMMISSION

Beverly G. Baker
Chief, Compliance and Information Bureau

² Requests for installment plans should be mailed to: Chief, Billings and Collections, Mail Stop 1110A2, 1919 M Street, N.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 Commission's Rules.