

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

In the Matter of)	
)	
Alan D. Slater)	File Number: EB-FIELDWR-13-00006245
)	NAL/Acct. No: 201432920001
Licensee of WNQL715)	FRN: 0004644688
Mehama, Oregon)	

FORFEITURE ORDER

Adopted: February 2, 2015

Released: February 3, 2015

By the Regional Director, Western Region, Enforcement Bureau:

I. INTRODUCTION

1. We impose a penalty of \$10,000 against Alan D. Slater, land mobile licensee in Mehama, Oregon, for operating his station on an unauthorized frequency at an unauthorized location. Mr. Slater does not deny he operated the station, but argues the frequency violation was unintentional and that the location was authorized. After reviewing Mr. Slater's response to the *NAL*, we find no reason to cancel, withdraw or reduce the proposed penalty, and we therefore assess the \$10,000 forfeiture the Bureau previously proposed.

II. BACKGROUND

2. In response to an interference complaint from the Washington County Consolidated Communications Agency (Washington County), licensee of Public Safety and Special Emergency Station WQPQ345 in Washington County, Oregon, an agent from the Enforcement Bureau's Portland Resident Agent Office (Portland Office) identified and located the source of the interfering transmissions on frequency 854.4125 MHz to a transmitter for land mobile station WNQL715 located at 21400 NE Bachelor Blvd., Hillsboro, Oregon.¹ The agent determined that Mr. Slater was the licensee of Station WNQL715 in Mehama, Oregon, and that the Station WNQL715 license did not authorize operation on frequency 854.4125 MHz, nor did it authorize operation at that site in Hillsboro, Oregon. The Portland Office issued a *Warning Letter*.² Mr. Slater acknowledged that the transmitter for Station WNQL715 was erroneously configured to operate on the frequency licensed to Washington County, and removed the transmitter from the Hillsboro location.³

3. On November 22, 2013, the Enforcement Bureau's Portland Office issued a Notice of Apparent Liability for Forfeiture (*NAL*) proposing a \$10,000 forfeiture against Mr. Slater for his apparent willful and repeated violation of Section 301 of the Communications Act of 1934, as amended (Act)⁴ and

¹ The *NAL* includes a more complete discussion of the facts and history of this case and is incorporated herein by reference. *Alan D. Slater NAL*, Notice of Apparent Liability for Forfeiture, 28 FCC Rcd 15954, 15954-55, paras. 2-4 (Enf. Bur. 2013).

² See *Alan D. Slater*, Warning for Unlicensed Radio Operation (Feb. 21, 2013) (on file in EB-FIELDWR-13-00006245) (*Warning Letter*).

³ See Letter of Response from Alan D. Slater, to Portland Resident Agent Office (Mar. 4, 2013) (on file in EB-FIELDWR-13-00006245) (*Warning Letter Response*).

⁴ 47 U.S.C. § 301.

Section 1.903(a)–(b) of the Commission’s Rules (Rules)⁵ by operating radio transmitting equipment on an unauthorized frequency and at an unauthorized location.

4. On December 19, 2013, Mr. Slater filed a response to the *NAL*.⁶ Mr. Slater requests cancellation of the proposed forfeiture because, while he “readily admit[s] this station was operating on 854.4125 MHz,” he did not intentionally tune the Station to that frequency and therefore, the violation was not willful.⁷ In addition, Mr. Slater argues that the operation of the Station at the unauthorized location was consistent with Section 90.621(b)(6) of the Rules, which “allows the station location to be modified as long as the resultant 22 dbu contour is within the 22 dbu contour of the other licensed stations covered under the license.”⁸ Mr. Slater argues that the unauthorized location cited in the *NAL* falls under provisions of this rule, and therefore, operation was not from an unauthorized location.⁹

III. DISCUSSION

5. The Bureau proposed a forfeiture in this case in accordance with Section 503(b) of the Act,¹⁰ Section 1.80 of the Rules,¹¹ and the *Forfeiture Policy Statement*.¹² When we assess forfeitures, Section 503(b)(2)(E) of the Act requires that we 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 such other matters as justice may require.”¹³ As discussed below, we have fully considered Mr. Slater’s response to the *NAL* but find none of his arguments persuasive. We therefore affirm the \$10,000 forfeiture proposed in the *NAL*.

A. The Commission of an Act, Irrespective of Any Intent to Violate the Law, Qualifies as Willful Under Section 312 of the Act

6. Mr. Slater does not contest the facts recited in the *NAL*. Instead, he requests cancellation of the proposed forfeiture because he did not intentionally tune the Station to operate on a frequency that was not listed on the Station’s license and did not intend to cause harmful interference to Washington County.¹⁴ 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.¹⁵ Section 312(f)(1) of the Act defines “willful” as the “conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate” the law.¹⁶ The

⁵ 47 C.F.R. § 1.903(a)–(b).

⁶ *Alan D. Slater*, Response to Notice of Apparent Liability (Dec. 19, 2013) (on file in EB-FIELDWR-13-00006245) (*NAL Response*).

⁷ *Id.* at 1.

⁸ *Id.*

⁹ *Id.* at 1–2.

¹⁰ 47 U.S.C. § 503(b).

¹¹ 47 C.F.R. § 1.80.

¹² *The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087 (1997), *recons. denied*, 15 FCC Rcd 303 (1999) (*Forfeiture Policy Statement*).

¹³ 47 U.S.C. § 503(b)(2)(E).

¹⁴ *NAL Response* at 1.

¹⁵ 47 U.S.C. § 503(b).

¹⁶ 47 U.S.C. § 312(f)(1).

legislative history to Section 312(f)(1) of the Act clarifies that this definition of willful applies to both Sections 312 and 503(b) of the Act,¹⁷ and the Commission has so interpreted the term in the Section 503(b) context.¹⁸ Mr. Slater acknowledged that he operated the Station, therefore, we find that his operation of the Station was willful, according to the Act. We further find that Mr. Slater's lack of knowledge about the frequency in use is "at best, ignorance of the law, which the Commission does not consider a mitigating circumstance."¹⁹ Even if we were to accept Mr. Slater's argument that the operation on the unauthorized frequency was not "willful," it was nevertheless repeated.²⁰

B. The Transmitter Location Flexibility Permitted to a Narrow Group of Licensees Under Section 90.621(b)(6) of the Rules Does Not Extend to Unauthorized Operations

7. Mr. Slater also argues that the location of the station's transmitter, while also not specifically authorized on the Station's license, was nevertheless authorized pursuant to Section 90.621(b)(6) of the Rules.²¹ Mr. Slater is incorrect. Section 90.621(b)(6) "addresses the situation where a co-channel 800 MHz station has been authorized as short-spaced, and the incumbent licensee of a station operating within the short-spaced distance wishes to modify its license. The rule section allows the incumbent licensee to modify its facilities as long as the modification does not extend its 22 dBu contour beyond its maximum 22 dBu contour in the direction of the short-spaced station."²² Contrary to Mr. Slater's claim, that rule does not address or apply to "other licensed stations covered under the license."²³ Rather, that rule section applies narrowly to *authorized* short-spaced stations and incumbent licensees. Mr. Slater was not operating the Station on an authorized frequency and the Station was not authorized to operate short-spaced. Instead, Mr. Slater was operating the Station on an unauthorized frequency, 854.4125 MHz, which was co-channel to and causing interference to a public safety licensee authorized on that frequency. Given that the location of Mr. Slater's operation was not authorized on the Station's license, we find that he operated the Station at an unauthorized location.

¹⁷ H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982) ("This provision [inserted in section 312] defines the terms 'willful' and 'repeated' for purposes of section 312, and for any other relevant section of the act (e.g., section 503) As defined[,] . . . 'willful' means that the licensee knew that he was doing the act in question, regardless of whether there was an intent to violate the law. 'Repeated' means more than once, or where the act is continuous, for more than one day. Whether an act is considered to be 'continuous' would depend upon the circumstances in each case. The definitions are intended primarily to clarify the language in sections 312 and 503, and are consistent with the Commission's application of those terms").

¹⁸ See, e.g., *S. Cal. Broad. Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991).

¹⁹ *S. Cal. Broad. Co.*, 6 FCC Rcd at 4387, para. 3.

²⁰ See *S. Cal. Broad. Co.*, 6 FCC Rcd at 4388, para.5; see also *Infinity Broadcasting Corporation of Florida*, Order on Review, 24 FCC Rcd 4270, 4279, para. 25 (2009).

²¹ *NAL Response* at 1–2. Section 90.621(b)(6) states: "A station located closer than the distances provided in this section to a co-channel station that was authorized as short-spaced under paragraph (b)(4) of this section shall be permitted to modify its facilities as long as the station does not extend its 22 dBu contour beyond its maximum 22 dBu contour (i.e., the 22 dBu contour calculated using the station's maximum power and antenna height at its original location) in the direction of the short-spaced station." 47 C.F.R. § 90.621(b)(6).

²² *Third District Enterprises, LLC Applications for New 800 MHz Stations in Los Angeles and San Diego Counties, California*, Order, 27 FCC Rcd 1980, 1989, para. 23 (WTB 2012), *recon dismissed in* 29 FCC Rcd 7352 (WTB 2014) (The purpose of Section 90. 621(b)(6) "is to protect the interference rights of both an incumbent licensee and a licensee authorized to operate within the minimum separation distance allowed with regard to the incumbent, while allowing the incumbent to modify its station operations.")

²³ *NAL Response* at 1.

8. Weighing the relevant statutory factors and our own forfeiture guidelines, we conclude, based upon the evidence before us, that the proposed forfeiture of \$10,000 properly reflects the seriousness, duration and scope of Mr. Slater's violations.

IV. CONCLUSION

9. Based on the record before us and in light of the applicable statutory factors, we conclude that Mr. Slater willfully and repeatedly violated Section 301 of the Act and Section 1.903(a)–(b) of the Rules by operating radio transmitting equipment on an unauthorized frequency and at an unauthorized location in Hillsboro, Oregon. We decline to cancel or reduce the \$10,000 forfeiture proposed in the *NAL*.

V. ORDERING CLAUSES

10. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Act²⁴ and Section 1.80 of the Rules,²⁵ Alan D. Slater **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of ten thousand dollars (\$10,000) for willfully and repeatedly violating of Section 301 of the Act and Section 1.903(a)–(b) of the Rules.

11. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within thirty (30) calendar days after the release of this Forfeiture Order.²⁶ If the forfeiture is not paid within the period specified, the case may be referred to the U.S. Department of Justice for enforcement of the forfeiture pursuant to Section 504(a) of the Act.²⁷

12. Payment of the forfeiture must be made by check or similar instrument, wire transfer, or credit card, and must include the *NAL*/Account Number and FRN referenced above. Alan D. Slater shall send electronic notification of payment to WR-Response@fcc.gov on the date said payment is made. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted.²⁸ When completing the Form 159, enter the Account Number in block number 23A (call sign/other ID) and enter the letters "FORF" in block number 24A (payment type code). Below are additional instructions that should be followed based on the form of payment selected:

- Payment by check or money order must be made payable to the order of the Federal Communications Commission. Such payments (along with completed Form 159) must be mailed to the Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.
- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. To complete the wire transfer and ensure appropriate crediting of the wired funds, a completed Form 159 must be faxed to U.S. Bank at (314) 418-4232 on the same business day the wire transfer is initiated.
- Payment by credit card must be made by providing the required credit card information on FCC Form 159 and signing and dating the Form 159 to authorize the credit card payment. The completed Form 159 must then be mailed to Federal Communications Commission,

²⁴ 47 U.S.C. § 503(b).

²⁵ 47 C.F.R. § 1.80.

²⁶ *Id.*

²⁷ 47 U.S.C. § 504(a).

²⁸ An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.

13. Any request for making full payment over time under an installment plan should be sent to: Chief Financial Officer – Financial Operations, Federal Communications Commission, 445 12th Street, SW, Room 1-A625, Washington, D.C. 20554.²⁹ Questions regarding payment procedures should be directed to the Financial Operations Group Help Desk by telephone, 1-877-480-3201, or by e-mail, ARINQUIRIES@fcc.gov.

14. **IT IS FURTHER ORDERED** that a copy of this Forfeiture Order shall be sent by first class mail and certified mail, return receipt requested, to Alan D. Slater at his address of record.

FEDERAL COMMUNICATIONS COMMISSION

Rebecca L. Dorch
Regional Director, Western Region
Enforcement Bureau

²⁹ See 47 C.F.R. § 1.1914.