

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

In the Matter of)	
)	File No. EB-02-PA-301
Tekk Comm Communications)	
Waterford, New Jersey)	NAL/Acct. No. 200332400001
)	
)	FRN 0004-4496-41
)	

FORFEITURE ORDER

Adopted: January 12, 2004

Released: January 14, 2004

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this *Forfeiture Order* (“*Order*”), we issue a monetary forfeiture in the amount of three thousand two hundred dollars (\$3,200) to Tekk Comm Communications, LP (“Tekk”), licensee of station WPPT607, for willful and repeated violation of Section 1.903(a) of the Commission’s Rules.¹ The noted violation involves Tekk Comm’s operation of station WPPT607 from an unauthorized location.

2. On October 22, 2002, the District Director of the Commission's Philadelphia, Pennsylvania Field Office ("Philadelphia Office") issued a *Notice of Apparent Liability for Forfeiture* ("*NAL*")² in the amount of four thousand dollars (\$4,000) to Tekk. Tekk filed a response on November 18, 2002.

II. BACKGROUND

3. On July 16, 2002, while conducting an audit of the Private Land Mobile Radio Services in the 450 – 470 MHz band, a Commission agent from the Philadelphia Office detected transmissions on frequency 464.375 MHz in the Williamstown, New Jersey area. A check of Commission databases indicated that the Commission had not authorized that frequency for use in Williamstown, New Jersey.

¹ 47 C.F.R. § 1.903.

² *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200332400001 (Enf. Bur., Philadelphia Office, released October 22, 2002).

4. On August 15, 2002, another Commission agent from the Philadelphia Office used direction-finding techniques to determine that radio transmitting equipment was being operated at 1277 Sykes Lane, Williamstown, New Jersey on frequency 464.375 MHz. The agent monitored a short, pulse-type signal of less than one second duration being transmitted approximately every ten seconds. The agent also determined that Tekk had installed a transmitter at 1277 Sykes Lane, Williamstown, New Jersey to provide additional radio communications capabilities on frequency 464.375 MHz. At the time, Tekk was authorized to operate station WPPT607 on frequency 464.375 MHz at RD5, Centerton, New Jersey.

5. On August 28, 2002, the agent monitored radio transmissions on frequency 464.375 MHz. Using direction-finding techniques, the agent determined that radio transmitting equipment was being operated at 1277 Sykes Lane, Williamstown, New Jersey on frequency 464.375 MHz. When he arrived at that location, the agent encountered Gary Bendy, President of Tekk. Mr. Bendy confirmed that Tekk was operating a transmitter on frequency 464.375 at 1277 Sykes Lane, Williamstown, New Jersey.

6. On October 22, 2002, the District Director of the Philadelphia Office issued a *NAL* to Tekk for willfully and repeatedly violating Section 1.903(a) of the Rules. On November 18, 2002, Tekk responded to the *NAL*. In its response, Tekk states that it moved station WPPT607 from its properly licensed site to Williamstown, New Jersey, as a test of its possible permanent relocation to enhance coverage. Tekk states that, immediately after speaking to the Commission agent, it applied to Industrial Telecommunications Association (“ITA”) for a frequency and received a file number from the FCC within a couple of days. Tekk further states that its violation was not willful and that it has a history of compliance with the Commission’s rules. Therefore, Tekk seeks reduction of the forfeiture.

III. DISCUSSION

7. The proposed forfeiture amount in this case is being assessed in accordance with Section 503(b) of the Communications Act of 1934, as amended (“Act”),³ Section 1.80 of the 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 Tekk’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

8. Section 1.903(a) of the Rules provides that stations in the Wireless Radio Services must be used and operated only in accordance with the rules applicable to their particular service and with a valid authorization granted by the Commission. On August 15, 2002 and August 28, 2002, Tekk operated a transmitter on its authorized frequency 464.375 MHz from an unauthorized location.

³ 47 U.S.C. § 503(b).

⁴ 47 C.F.R. § 1.80.

⁵ 47 U.S.C. § 503(b)(2)(D).

9. We have examined Tekk's response to the *NAL* pursuant to the statutory factors above, and in conjunction with the *Policy Statement*. As a result of our review, we conclude that Tekk willfully⁶ and repeatedly⁷ violated Section 1.903(a) of the Rules. Although Tekk claims that the violations were not willful, its deliberate act of moving station WPPT607 to an unauthorized site, even for test purposes, was a conscious and deliberate commission of an act which violated Section 1.903(a) of the Rules. Thus, its violation was willful. Tekk further claims to have taken corrective measures immediately after the violation. However, we note that remedial actions taken to correct the violation, while commendable, are not mitigating factors.⁸ Finally Tekk claims that this is a first violation, and thus, that it has a prior history of overall compliance with the Commission's rules. We believe that reduction of the proposed monetary forfeiture to \$3,200 for Tekk's history of overall compliance is warranted.

IV. ORDERING CLAUSES

10. Accordingly, **IT IS ORDERED THAT**, pursuant to Section 503(b) of the Act and Sections 0.111, 0.311 and 1.80(f)(4) of the Rules,⁹ Tekk Comm Communications **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of three thousand two hundred dollars (\$3,200) for willfully and repeatedly violating Section 1.903(a) of the Rules.

11. 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.¹⁰ Payment shall be made by mailing a check or similar instrument, payable to the order of the "Federal Communications Commission," to the Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note NAL/Acct. No. 200332400001, and FRN 0004-4496-41. 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. 20554.¹¹

⁶ 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', 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" See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387-88 (1991).

⁷ As provided by 47 U.S.C. § 312(f)(2), a continuous violation is "repeated" if it continues for more than one day. The *Conference Report* for Section 312(f)(2) indicates that Congress intended to apply this definition to Section 503 of the Act as well as Section 312. See H.R. Rep. 97th Cong. 2d Sess. 51 (1982). See *Southern California Broadcasting Company*, 6 FCC Rcd 4387, 4388 (1991) and *Western Wireless Corporation*, 18 FCC Rcd 10319 at fn 56 (2003).

⁸ See, e.g., *AT&T Wireless Services, Inc.*, 17 FCC Rcd 21866, 21871 (2002); *Seawest Yacht Brokers*, 9 FCC Rcd 6099 (1994); *Station KGVJ, Inc.*, 42 FCC 2d 258, 259 (1973).

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

¹⁰ 47 U.S.C. § 504(a).

¹¹ See 47 C.F.R. § 1.1914.

12. **IT IS FURTHER ORDERED** that, a copy of this *Order* shall be sent by Certified Mail Return Receipt Requested and by First Class Mail to Tekk Comm Communications, 6 Maiese Ave., Waterford, New Jersey 08322.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon
Chief, Enforcement Bureau