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

In the Matter of)	File No. EB-01-LA-142
)	
California Speedway)	NAL/Acct. No. 200232900002
)	
Fontana, California)	FRN# 0006-0339-97
)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: May 30, 2002

By the District Director, Los Angeles Office, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture ("NAL"), we find that California Speedway has apparently willfully violated Section 301 of the Communications Act of 1934, as amended, ("Act"),¹ by operating an unlicensed radio transmitter on frequency 104.7 MHz. We conclude that California Speedway is apparently liable for a forfeiture in the amount of ten thousand dollars (\$10,000).

II. BACKGROUND

2. On November 2, 2001, the Commission's Los Angeles Office received a complaint alleging that California Speedway in Fontana, California was operating a radio station on the frequency 104.7 MHz. A search of the Federal Communications Commission ("FCC") licensee database revealed no license issued for the operation of an FM broadcast station on 104.7 MHz in or around Fontana, California and no broadcast authorization issued to California Speedway.²

3. On November 8, 2001, an agent with the Los Angeles Office spoke on the telephone with the Director of Operations for California Speedway. The Director of Operations stated that California Speedway operates a one-watt transmitter on the frequency 104.7 MHz.

4. On November 14, 2001, the Los Angeles Office sent a Notice of Unlicensed Radio Operation to California Speedway at 9300 Cherry Avenue in Fontana, California. The Notice of Unlicensed Radio Operation warned that operation of an unlicensed radio station on 104.7 MHz violated 47 U.S.C. §301; outlined the potential penalties for operating an unlicensed station in violation of 47 U.S.C. §301, including seizure of the equipment, fines, forfeitures and imprisonment; and directed the operator of the

¹ 47 U.S.C. § 301.

² California Speedway holds a license to operate on several frequencies in the 461-466 MHz band under call sign WPJX911.

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station to terminate operation of the unlicensed station immediately. No written response to the Notice of Unlicensed Radio Operation was received by the Los Angeles Office. On March 22, 2002, an agent with the Los Angeles Office again spoke on the telephone with the Director of Operations. During the conversation, the agent orally advised that the operation of the unlicensed radio station on 104.7 MHz could result in a forfeiture.

5. On March 24, 2002, agents from the Los Angeles Office conducted an investigation at California Speedway at 9300 Cherry Avenue in Fontana, California. Using a FCC Mobile Digital Direction Finding vehicle and direction finding techniques, the agents detected radio transmissions on the frequency 104.7 MHz from a location in the middle of the grounds of California Speedway. Field strength measurements revealed that the radio emissions exceeded the level allowed for non-licensed operation under Sections 15.209(a) and 15.239(b) of the FCC Rules.³ The measured field strength was 63,500 $\mu\text{V/m}$, or 254 times that permitted by the rules.

III. DISCUSSION

6. Section 503(b) of the Act provides that any person who willfully fails to comply substantially with the terms and conditions of any license, or willfully 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.⁴ The term “willful” as used in Section 503(b) has been interpreted to mean simply that the acts or omissions are committed knowingly.⁵

7. Section 301 of the Act sets forth 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 only exceptions to the licensing requirement of Section 301 of the Act are for certain transmitters using or operating at a power level that complies with the standards established in Part 15 of the FCC Rules. California Speedway’s operation of a broadcast station on 104.7 MHz was not licensed and exceeded the permissible level for non-licensed low-powered radio transmissions by 254 times. Based on the evidence before us, we find that on March 24, 2002, California Speedway operated radio transmission apparatus without a Commission authorization in willful violation of Section 301 of the Act.

8. *The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines (“Forfeiture Policy Statement”)*,⁶ sets a base forfeiture amount of \$10,000 for unlicensed operation. In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(D) of the Act, which include the nature, circumstances, extent, and gravity of the violation(s), and with respect to the violator, the degree of

³ 47 C.F.R. §§ 15.209(a), 15.239(b).

⁴ 47 U.S.C. §503(b).

⁵ 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 (1991).

⁶ 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999).

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culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.⁷ Applying the Forfeiture Policy Statement and statutory factors to the instant case, a \$10,000 forfeiture is warranted.

IV. ORDERING CLAUSES

9. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Act and Sections 0.111, 0.311 and 1.80 of the Rules,⁸ California Speedway is hereby NOTIFIED of its APPARENT LIABILITY FOR A FORFEITURE in the amount of ten thousand dollars (\$10,000) for willfully violating Section 301 of the Act.

10. IT IS FURTHER ORDERED THAT, pursuant to Section 1.80 of the Commission's Rules, within thirty days of the release date of this NOTICE OF APPARENT LIABILITY, California Speedway SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

11. Payment of the forfeiture may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment must include the FCC Registration Number (FRN) 0006-0339-97, and NAL/Acct. No. 200232900002.

12. Any response to this NAL must be mailed to Federal Communications Commission, Enforcement Bureau, Technical and Public Safety Division, 445 12th Street, S.W., Washington, D.C. 20554 and must include the NAL/Acct. No. 200232900002.

13. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices ("GAAP"); or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

14. Requests for payment of the full amount of this Notice of Apparent Liability under an installment plan should be sent to: Chief, Revenue and Receivable Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.⁹

⁷ 47 U.S.C. § 503(b)(2)(D).

⁸ 47 C.F.R. §§ 0.111, 0.311, 1.80.

⁹ See 47 C.F.R. § 1.1914.

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15. IT IS FURTHER ORDERED THAT a copy of this NOTICE OF APPARENT LIABILITY shall be sent by Certified Mail, # 7001 2510 0001 9914 6071, Return Receipt Requested, to California Speedway, 9300 Cherry Avenue, Fontana, California, 92335.

FEDERAL COMMUNICATIONS COMMISSION

Catherine Deaton
District Director
Los Angeles Office