

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

In the Matter of)	
)	
Steven A. Skalecki)	File Number: EB-06-CG-064
)	
Milwaukee, WI)	NAL/Acct. No: 200832320001
)	
)	FRN: 0017228933
)	

FORFEITURE ORDER

Adopted: March 13, 2009

Released: March 17, 2009

By the Regional Director, Northeast Region, Enforcement Bureau:

I. INTRODUCTION

1. In this *Forfeiture Order* (“*Order*”), we issue a monetary forfeiture in the amount of ten thousand dollars (\$10,000) to Steven A. Skalecki (“Skalecki”) for willfully and repeatedly violating Section 301 of the Communications Act of 1934, as amended (“Act”),¹ by operating radio transmitting equipment and providing services and facilities incidental to the operation of an unlicensed radio transmitter on the frequency 92.9 MHz in Milwaukee, WI without a license. In this *Order*, we consider Skalecki’s claim that he did not operate an unlicensed radio station in Milwaukee, WI and that the unlicensed station at issue here was operating from another nearby property.

III. BACKGROUND

2. On March 25, 2006, in response to a complaint, Commission agents, using a mobile direction-finding vehicle, monitored the frequency 92.9 MHz in Milwaukee, WI. The agents observed a radio station broadcasting on 92.9 MHz and determined that the station was operating from a single family residence at 9026 West Burdick Avenue, Milwaukee, Wisconsin, 53227. The agents subsequently took field strength measurements and determined that the signals being broadcast exceeded the limits for operation under Part 15 of the Commission’s Rules (“Rules”)² and therefore required a license. An agent searched Commission databases and found no evidence of a Commission authorization for this operation on 92.9 MHz in Milwaukee, Wisconsin.

3. Later that day, the agents knocked on the front door of 9026 West Burdick Avenue, but there was no response. A Notice of Unlicensed Operation (“*NOUO*”) was left between the glass panes in the front storm door. The *NOUO* warned Skalecki that operation of the unlicensed radio station on 92.9 MHz violated Section 301 of the Act and outlined the potential penalties for such a violation, including

¹ 47 U.S.C. § 301.

² Section 15.239 of the Rules provides that non-licensed broadcasting in the 88-108 MHz band is permitted only if the field strength of the transmission does not exceed 250 µV/m at three meters. 47 C.F.R. § 15.239. Measurements showed that the field strength of the station’s signal exceeded the permissible level for a non-licensed Part 15 transmitter.

seizure of the equipment, fines and imprisonment. The *NOUO* also directed Skalecki to terminate operation of the unlicensed station immediately.

4. The agent searched City of Milwaukee property tax records and found that Steven A. Skalecki is listed in those records as the owner of 9026 West Burdick Avenue. The agent further determined that Mr. Skalecki is the individual responsible for the utilities at 9026 West Burdick Avenue.

5. On April 17, 2006, the Chicago District Office sent, via certified mail, return receipt requested, a Notice of Unlicensed Operation (“*NOUO*”) addressed to Steven A. Skalecki at 9026 West Burdick Avenue, Milwaukee, Wisconsin 53227. The *NOUO* warned Skalecki that operation of the unlicensed radio station on 92.9 MHz violated Section 301 of the Act and outlined the potential penalties for such a violation, including seizure of the equipment, fines and imprisonment. The *NOUO* also directed Skalecki to terminate operation of the unlicensed station immediately and provided Skalecki ten days to reply. The return receipt from the U.S. Postal Service shows that Mr. Skalecki signed for and received the *NOUO* on April 24, 2006.

6. On May 6, 2006, Commission agents, using a mobile direction-finding vehicle, monitored the frequency 92.9 MHz in Milwaukee, WI. The agents again observed a radio station broadcasting on 92.9 MHz and determined that the station was operating from 9026 West Burdick Avenue in Milwaukee, Wisconsin. The agents subsequently took field strength measurements and determined that the signals being broadcast exceeded the limits for operation under Part 15 of the Rules and therefore required a license. No one answered the front door.

7. On May 10, 2006, the Chicago office received a response (“Response”) to the *NOUO* issued to Skalecki. In the Response, Mr. Skalecki denied having any broadcast equipment and also stated that no local broadcasts can be heard on 92.9 MHz. In the Response, Mr. Skalecki also acknowledged receipt of the *NOUO* left in the front storm door of 9026 West Burdick Avenue by Commission Agents on March 25, 2006.

8. On March 1, 2007, in response to a complaint of interference from an unlicensed station, a Commission agent, using a mobile direction-finding vehicle, monitored the frequency 92.9 MHz in Milwaukee, WI. The agent again observed a radio station broadcasting on 92.9 MHz and determined that the station was operating from 9026 West Burdick Avenue in Milwaukee, Wisconsin. The agent subsequently took field strength measurements and determined that the signals being broadcast exceeded the limits for operation under Part 15 of the Rules and therefore required a license.

9. On March 14, 2007, Commission agents, using a mobile direction-finding vehicle, monitored the frequency 92.9 MHz in Milwaukee, WI. The agents again observed a radio station broadcasting on 92.9 MHz and determined that the station was operating from 9026 West Burdick Avenue in Milwaukee, Wisconsin. The Agents knocked on the front door of 9026 West Burdick Avenue, but there was no response.

10. On May 24, 2007, a Commission agent, using a mobile direction-finding vehicle, monitored the frequency 92.9 MHz in Milwaukee, WI. The agent again observed a radio station broadcasting on 92.9 MHz and determined that the station was operating from 9026 West Burdick Avenue in Milwaukee, Wisconsin. The agent took field strength measurements and determined that the signals being broadcast exceeded the limits for operation under Part 15 of the Rules and therefore required a license. No one answered the front door.

11. On May 28, 2007, a Commission agent monitored the frequency 92.9 MHz in Milwaukee, WI. The agent again observed a radio station broadcasting on 92.9 MHz and determined that the station was operating from 9026 West Burdick Avenue in Milwaukee, Wisconsin. No one answered the front door. The agent interviewed a neighbor who confirmed that Steven Skalecki lived at this

address.

12. On December 14, 2007, the Chicago Field Office issued a Notice of Apparent Liability for Forfeiture (“NAL”) to Skalecki in the amount of \$10,000 for operating radio transmitting equipment on the frequency 92.9 MHz in Milwaukee, WI without a license.³ In his response to the NAL, Skalecki denies operating an unlicensed station on 92.9 MHz at 9026 West Brudick Avenue in Milwaukee, Wisconsin. Skalecki reports that he operates a weather monitoring station from that property, but claims that the unlicensed broadcast station was operating from another nearby residence on which several antennas are located.

IV. DISCUSSION

13. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Act,⁴ Section 1.80 of the Rules,⁵ and *The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines (“Forfeiture Policy Statement”)*.⁶ In examining Skalecki’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.⁷

14. We decline to cancel the proposed forfeiture based on Skalecki’s claim that he was not operating an unlicensed broadcast station from 9026 West Brudick Avenue in Milwaukee, Wisconsin. The only evidence Skalecki provides in support of his claim is a list of nine dates on which he states he observed a station operating on 92.9 MHz from a nearby residence at South 93rd Street and West Oklahoma Avenue.⁸ FCC agents determined, using mobile direction finding equipment, that an unlicensed broadcast station was operating from 9026 West Brudick Avenue in Milwaukee, Wisconsin on six occasions.⁹ Absent evidence that FCC agents’ direction findings and field strength measurements were in error, we stand by our agents’ determination that an unlicensed broadcast station was operating from that location.¹⁰

³ *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200832320001 (Enf. Bur., Chicago Office, rel. December 14, 2007). Skalecki notes in his response that the NAL was issued six months from the last broadcast on 92.9 MHz. Pursuant to Section 503(b)(6)(A), the Commission had one year from the date of the violation charged to issue a NAL. 47 U.S.C. § 503(b)(6)(A).

⁴ 47 U.S.C. § 503(b).

⁵ 47 C.F.R. § 1.80.

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

⁷ 47 U.S.C. § 503(b)(2)(E).

⁸ Skalecki claims that he determined the location from which the station allegedly was operating based on interference he was received while in his car. Skalecki, however, provides no supporting documentation.

⁹ Skalecki also provides a number of dates beginning in June 2007 on which he claims he observed a station operating on 92.9 MHz. He also claims that he heard the station broadcast the following announcement – “Due to Federal regulations, we were asked to move our transmitter to a new location and FM frequency. Soon this station will be broadcasting on 99.9 FM.” Skalecki further reports that the transition occurred on July 4, 2007, and that, with a friend who has a “transmitter hunter device,” he traced the station on 99.9 MHz to 2025 S. Muskego Avenue in Milwaukee, Wisconsin. The violations at issue in this NAL took place between March 25, 2006, and May 28, 2007, so any claims with regard to an unlicensed station operating after May 28, 2007, have no bearing on the instant case.

¹⁰ FCC agents receive extensive training on how to use professional radio direction-finding equipment. Agents are

15. We reject Skalecki's claim that we cannot assess a forfeiture because agents were unable to conduct an inspection. Skalecki claims that he was unaware of the five visits that occurred after the March 25, 2006, visit and that, had he known of those visits and been available, he would have allowed agents to conduct an inspection. Whether or not agents were able to inspect the station, however, does not affect our determination here that Skalecki violated Section 301 of the Act. First, as noted above, agents determined, using direction finding equipment, that an unlicensed broadcast station operated from 9026 West Brudick Avenue in Milwaukee, Wisconsin on six occasions. Second, 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 granted under the provisions of the Act. Section 3(33) of the Act defines "communications by radio" as "the transmission by radio of writing, signs, signals, pictures, and sounds of all kinds, including all instrumentalities, facilities, apparatus, and services (among other things the receipt, forwarding, and delivery of communications) incidental to such transmission."¹¹ We previously have held that liability for unlicensed operation may be assigned to an individual who provides services and facilities incidental to the transmission of communications by radio.¹² An agent determined that Skalecki is listed in the City of Milwaukee property tax records as the owner of 9026 West Burdick Avenue and that he is the individual responsible for the utilities at that address. We therefore find that, even absent a station inspection, Skalecki is responsible for the unlicensed station operation on 92.9 MHz at 9026 West Burdick Avenue in Milwaukee, WI, because he provided the facilities used in the operation of the station.

16. We have examined Skalecki'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 Skalecki willfully and repeatedly violated Section 301 of the Act and that the \$10,000 forfeiture proposed in the *NAL* is warranted.

V. ORDERING CLAUSES

17. 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, Steven A. Skalecki **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of ten thousand dollars (\$10,00) for violation of Section 301 of the Act.¹³

18. Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Account Number and FRN Number referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank TREAS/NYC, and account number 27000001. For payment by credit card, an FCC Form 159 (Remittance Advice) must be submitted. When completing the FCC Form 159, enter the NAL/Account number in block number 23A (call sign/other ID), and enter the letters "FORF" in block number 24A (payment type code). Requests for full payment under an installment plan should be sent to: Chief Financial Officer -- Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554. Please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: ARINQUIRIES@fcc.gov with any questions regarding payment procedures. Skalecki shall also send

specially trained on how to confirm accurate radio bearings on signal sources in congested areas. In this case, the accuracy of the results is further supported by the fact that the same signal source was identified multiple times.

¹¹ 47 U.S.C. § 153(33).

¹² See *Joni K. Craig*, Forfeiture Order, 21 FCC Rcd 10793 (EB 2006).

¹³ 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4); 47 U.S.C. § 301.

electronic notification on the date said payment is made to NER-Response@fcc.gov.

19. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by First Class and Certified Mail Return Receipt Requested to Steven A. Skalecki at his address of record.

FEDERAL COMMUNICATIONS COMMISSION

G. Michael Moffitt
Regional Director, Northeast Region
Enforcement Bureau