

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

In the Matter of)	
)	
Tommie Salter)	File Number: EB-FIELDSCR-14-00014625
)	NAL/Acct. No.: 201432700005
Jacksonville, Florida)	FRN: 0011485604

FORFEITURE ORDER

Adopted: February 5, 2015

Released: February 5, 2015

By the Regional Director, South Central Region, Enforcement Bureau:

I. INTRODUCTION

1. We impose a penalty of \$3,000 against Tommie Salter for refusing to allow an inspection of his Citizen Band (CB) radio station by Commission agents. The Commission's ability to conduct unannounced inspections to assess compliance with its rules is essential to our responsibility to promote safety of life and property through the use of wire and radio communication. Mr. Salter does not explicitly deny that he refused to allow agents to inspect his CB station, and, for the reasons stated below, we find that the violation was willful. However, we reduce the forfeiture based on Mr. Salter's demonstrated inability to pay.

2. Specifically, we issue a monetary forfeiture to Mr. Salter for willful violation of Section 303(n) of the Communications Act of 1934, as amended (Act),¹ and Section 95.426(a) of the Commission's rules (Rules).²

II. BACKGROUND

3. On August 22, 2014, the Enforcement Bureau's Tampa Office (Tampa Office) issued a Notice of Apparent Liability for Forfeiture (*NAL*) to Mr. Salter proposing a \$14,000 forfeiture against him for failure to allow an agent inspection of his CB station.³ As detailed in the *NAL*, Mr. Salter refused to allow agents from the Tampa Office to inspect his CB station after he was warned that refusing to allow such an inspection constituted a violation of the Rules.⁴ In his *NAL Response*, Mr. Salter does not deny refusing to allow the agents to inspect his CB station, but, as a mitigating factor, alleges he told the agents at approximately 1:10 P.M. that he had to leave for a doctor's appointment at 2 P.M.⁵ In addition, he submitted his federal tax returns for the previous 3 years.⁶

¹ 47 U.S.C. § 303(n).

² 47 C.F.R. § 95.426(a).

³ *Tommie Salter*, Notice of Apparent Liability for Forfeiture, 29 FCC Rcd 10065 (Enf. Bur. 2014) (*NAL*)

⁴ *Id.* at 10066, para. 4.

⁵ Letter from Tommie Salter, to Tampa Office, South Central Region, Enforcement Bureau at 1 (received Sept. 22, 2014) (on file in EB-FIELDSCR-14-00014625) (*NAL Response*). Moreover, Mr. Salter states that local police instructed the community not to let officers into their homes without seeing identification. At that same time, however, he admits that the agents from the Tampa Office identified themselves as agents and showed him their identification. *Id.* Accordingly, we find this information provides no grounds upon which to reduce the forfeiture.

⁶ *Id.* at 2.

III. DISCUSSION

4. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Act,⁷ Section 1.80 of the Rules,⁸ and the *Forfeiture Policy Statement*.⁹ In examining Mr. Salter's *NAL Response*, Section 503(b)(2)(E) 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.¹⁰ As discussed below, we have considered Mr. Salter's *NAL Response* in light of these statutory factors and find that the violations were willful, but that a forfeiture reduction is justified based on Mr. Salter's documented inability to pay the forfeiture.

5. Mr. Salter does not deny that he refused to allow the agents to inspect his CB station but alleges he could not stay for the inspection, because he had a doctor's appointment. Neither of the two agents present during the attempted inspection recall Mr. Salter mentioning the doctor's appointment or documented the alleged appointment in their notes, and Mr. Salter provided no third party evidence of the alleged appointment. However, even if he had such an appointment, Mr. Salter refused to allow an inspection at the time of request and did not ask the agents to reschedule the inspection, so we find no reason to reduce the forfeiture based on his alleged appointment. We therefore find that Mr. Salter willfully refused to allow an inspection of his CB station.

6. Mr. Salter requests cancellation or reduction of the proposed forfeiture based on his inability to pay. With regard to an individual's or entity's inability to pay claim, the Commission has determined that, in general, gross income or revenues are the best indicator of an ability to pay a forfeiture.¹¹ Based on the financial documents provided by Mr. Salter, we find sufficient basis to reduce the forfeiture to \$3,000.¹² However, we caution Mr. Salter that a party's inability to pay is only one factor in our forfeiture calculation analysis, and is not dispositive.¹³ We have previously rejected inability to pay claims in cases of repeated or otherwise egregious violations.¹⁴ Therefore, future violations of this kind may result in significantly higher forfeitures that may not be reduced due to Mr. Salter's financial circumstances. Accordingly, after consideration of the entire record, including Mr. Salter's *NAL*

⁷ 47 U.S.C. § 503(b).

⁸ 47 C.F.R. § 1.80.

⁹ *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*).

¹⁰ 47 U.S.C. § 503(b)(2)(E).

¹¹ See *Local Long Distance, Inc.*, Order of Forfeiture, 15 FCC Rcd 24385 (2000) (forfeiture not deemed excessive where it represented approximately 7.9 percent of the violator's gross revenues).

¹² This forfeiture amount falls within the percentage range that the Commission has previously found acceptable. See *supra* note 11. If Mr. Salter finds it financially infeasible to make full payment of this amount within 30 days, he can request an installment plan, as described in *infra* paragraph 10 of this Order.

¹³ See 47 U.S.C. § 503(b)(2)(E).

¹⁴ *Kevin W. Bondy*, Forfeiture Order, 26 FCC Rcd 7840 (Enf. Bur. 2011) (holding that violator's repeated acts of malicious and intentional interference outweigh evidence concerning his ability to pay), *aff'd*, Memorandum Opinion and Order, 28 FCC Rcd 1170 (Enf. Bur. 2013), *aff'd*, Memorandum Opinion and Order, 28 FCC Rcd 16815 (Enf. Bur. 2013); *Hodson Broad.*, Forfeiture Order, 24 FCC Rcd 13699 (Enf. Bur. 2009) (holding that permittee's continued operation at variance with its construction permit constituted an intentional and continuous violation, which outweighed permittee's evidence concerning its ability to pay the proposed forfeitures).

Response, the *Forfeiture Policy Statement*, and the factors set forth in Section 503(b)(2)(E) of the Act,¹⁵ we find that, although cancellation of the monetary forfeiture is not warranted, a reduction of the forfeiture amount from \$14,000 to \$3,000 is appropriate in this case.

IV. ORDERING CLAUSES

7. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Act and Sections 0.111, 0.204, 0.311, 0.314, and 1.80(f)(4) of the Rules, Tommie Salter **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of three thousand dollars (\$3,000) for violations of Section 303(n) of the Act and Section 95.426(a) of the Rules.¹⁶

8. 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 date of this Forfeiture Order.¹⁷ 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.¹⁸ Mr. Salter shall send electronic notification of payment to SCR-Response@fcc.gov on the date said payment is made. The payment must be made by check or similar instrument, wire transfer, or credit card, and must include the NAL/Account Number and FRN referenced above. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted.¹⁹ When completing the FCC 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 you should follow based on the form of payment you select:

- Payment by check or money order must be made payable to the order of the Federal Communications Commission. Such payments (along with the completed Form 159) must be mailed to 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, 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.

9. 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, S.W., Room 1-A625, Washington, D.C. 20554.²⁰ If you have questions regarding payment

¹⁵ 47 U.S.C. § 503(b)(2)(E). See 47 C.F.R. § 1.80(b)(8).

¹⁶ 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.111, 0.204, 0.311, 0.314, 1.80(f)(4), 73.49.

¹⁷ 47 C.F.R. § 1.80.

¹⁸ 47 U.S.C. § 504(a).

¹⁹ An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

²⁰ See 47 C.F.R. § 1.1914.

procedures, please contact the Financial Operations Group Help Desk by phone, 1-877-480-3201, or by e-mail, ARINQUIRIES@fcc.gov.

10. **IT IS FURTHER ORDERED** that a copy of this Forfeiture Order shall be sent by both First Class and Certified Mail, Return Receipt Requested, to Tommie Salter at his address of record.

FEDERAL COMMUNICATIONS COMMISSION

Dennis P. Carlton
Regional Director, South Central Region
Enforcement Bureau