

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

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

FORFEITURE ORDER

Adopted: November 12, 2002

Released: November 14, 2002

By the Chief, Enforcement Bureau:

INTRODUCTION

1. In this Forfeiture Order ("Order"), we issue a monetary forfeiture in the amount of eight thousand dollars (\$8,000) to California Speedway for willful violation of Section 301 of the Communications Act of 1934, as amended (the "Act").

2. On May 30, 2002, the District Director of the Enforcement Bureau's Los Angeles, California Office ("Los Angeles Office") issued a Notice of Apparent Liability for Forfeiture ("NAL") finding California Speedway apparently liable for a forfeiture in the amount of \$10,000 for willful violation of Section 301 of the Act.

BACKGROUND

3. On November 2, 2001, the Los Angeles Office received a complaint alleging that California Speedway, which is located in Fontana, California, was operating a radio station on frequency 104.7 MHz. An agent from the Los Angeles Office searched the Federal Communications Commission's ("FCC" or "Commission") license database which 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.

1 47 U.S.C. § 301.

2 California Speedway, NAL/Acct. No. 200232900002 (Enf. Bur., Los Angeles Office, May 30, 2002).

3 California Speedway's pleading is captioned as a "Petition for Reconsideration." Since a Notice of Apparent Liability is a proposed action, there is no basis upon which to file a petition for reconsideration. Accordingly, we will treat California Speedway's pleading as a response to the NAL.

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

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 and that the transmitter was used only during events.

4. On November 14, 2001, the Los Angeles Office sent a Notice of Unlicensed Radio Operation to California Speedway.<sup>5</sup> The Notice warned California Speedway that it may be operating a radio station on frequency 104.7 MHz without a license in violation of 47 U.S.C. § 301 and that such operation could result in penalties. The Notice directed the operator of the station to discontinue operation immediately if it was operating without an authorization. California Speedway did not submit a written response to the Notice.

5. On March 22, 2002, an agent from the Los Angeles Office once again spoke on the telephone with the Director of Operations for California Speedway. During the conversation, the agent orally advised that the operation of the unlicensed radio station on 104.7 MHz could result in a monetary forfeiture.

6. On March 24, 2002, agents from the Los Angeles Office conducted an investigation at California Speedway. Using a FCC Mobile Digital Direction Finding vehicle and direction finding techniques, the agents detected radio transmissions on 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 levels allowed for non-licensed operation under Sections 15.209(a) and 15.239(b) of the Commission's Rules ("Rules").<sup>6</sup> The measured field strength was 63,500  $\mu\text{V}/\text{m}$  or 254 times that permitted by the rules.

7. California Speedway argues that the facts cited in the NAL do not support the conclusion that it engaged in unlicensed operation.<sup>7</sup> It argues that the NAL cites only that California Speedway's equipment exceeded permissible emission limits.<sup>8</sup> Although, according to California Speedway, this suggests a possible violation for unauthorized emissions or exceeding power limits, this is insufficient evidence to establish unlicensed operation.<sup>9</sup> California Speedway also claims that it was not provided with documentation of the March 24 measurement and thus it cannot assess whether or not the violation occurred or whether imposition of the base forfeiture amount was justified.<sup>10</sup> California Speedway also claims that it was never told that it was prohibited from operating the equipment.<sup>11</sup>

8. California Speedway next argues that, *assuming arguendo*, a violation of 47 U.S.C.

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<sup>5</sup> Letter from Catherine Deaton, Acting District Director, Los Angeles Office to Craig Hatch, California Speedway dated November 14, 2001.

<sup>6</sup> 47 C.F.R. §§ 15.209(a) and 15.239(b).

<sup>7</sup> Response of California Speedway, 1, 2 (July 1, 2002) ("Response").

<sup>8</sup> *Id.*, at 5-7.

<sup>9</sup> *Id.*, at 6.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*, at 5.

§ 301 occurred, the NAL did not take into account facts warranting reduction or cancellation of the forfeiture.<sup>12</sup> California Speedway argues that the violation was minor because there is no evidence of substantial harm to any third party or that the violation was egregious, continuing or repeated.<sup>13</sup> Further, it argues that there is no evidence that California Speedway derived substantial gain from the operation or that the violation was intentional.<sup>14</sup>

9. Next, California Speedway claims that “[a]t all times, the Speedway operated the equipment in a good faith attempt to comply with Part 15 rules.”<sup>15</sup> It argues that the equipment was recommended to it as providing enhanced public address features which it was interested in providing and that when it acquired the equipment “it believed that equipment to be compliant with FCC equipment rules for use on an unlicensed basis on FM frequencies including those with public address systems.”<sup>16</sup> California Speedway states that when it originally purchased the equipment the manufacturer advised it to turn down the unit’s output control if it received any complaints of interference during use of the equipment.<sup>17</sup> California Speedway also states that it selected 104.7 MHz because the closest FM radio station operating on that frequency was 70 miles away and thus it believed that that station was beyond the range of possible interference.<sup>18</sup> Finally, California Speedway argues that it has a history of overall compliance with the Commission’s rules.

## DISCUSSION

10. The forfeiture amount in this case was assessed in accordance with Section 503(b) of the Act,<sup>19</sup> Section 1.80 of the Rules,<sup>20</sup> and the Commission’s *Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*.<sup>21</sup> In examining California Speedway’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 violation, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.<sup>22</sup>

11. We reject California Speedway’s argument that the evidence does not support a finding of unlicensed operation. Section 301 of the Act prohibits “operation of any apparatus for the transmission of energy or communications or signals by radio except under and in accordance with this Act and with a

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<sup>12</sup> *Id.*, at 7-10.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*, at 3.

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> 47 U.S.C. § 503(b).

<sup>20</sup> 47 C.F.R. § 1.80.

<sup>21</sup> 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999).

<sup>22</sup> 47 U.S.C. § 503(b)(2)(D).

license in that behalf granted under provisions of the Act.”<sup>23</sup> Section 15.1(a) of the Rules,<sup>24</sup> provides that Part 15 of the Rules<sup>25</sup> sets out the regulations under which an intentional radiator (e.g., a low power FM radio transmitter), may be operated without an individual license. Section 15.1(b) of the Rules provides that “operation of an intentional ... radiator **that is not in accordance with the regulations in this part must be licensed** pursuant to the provisions of [S]ection 301 of the Communications Act of 1934.”<sup>26</sup> Thus, by the clear wording of this rule, in order to be exempt from Section 301’s license requirement, an intentional radiator such as a low power FM radio transmitter must be operated in accordance with Part 15. Otherwise, the operation requires a license.

12. Pursuant to Section 15.239(b) of the Rules, non-licensed low power operation in the FM Band (88-108 MHz) is permitted only if the field strength of the transmissions does “not exceed 250 microvolts/meter (“ $\mu\text{V}/\text{m}$ ”) at three meters.”<sup>27</sup> The investigation conducted by the Los Angeles Office found the station’s field strength to measure 63,500  $\mu\text{V}/\text{m}$  when extrapolated to three meters. Thus, the measured field strength of California Speedway’s operation exceeded the permissible Part 15 level for a non-licensed low power FM operation (250  $\mu\text{V}/\text{m}$  at three meters) by 254 times. Therefore, California Speedway’s operation of the transmitter was not “in accordance with the regulation” in Part 15. As a result, under Section 15.1(b) of the Rules, California Speedway’s radio operation required a license. Since California Speedway had no license to operate at 104.7 MHz with this field strength, its operation violated Section 301 of the Act. California Speedway’s claim that it intended to operate the station under Part 15 is irrelevant since the standard articulated in Section 15.1 turns on whether the transmitter is, in fact, operated in accordance with Part 15; not whether California Speedway intended to operate the radio station under Part 15. Accordingly, we conclude that California Speedway willfully violated Section 301 of the Act when it engaged in unlicensed operation of a radio station on frequency 104.7 MHz.<sup>28</sup>

13. We conclude that a forfeiture in the amount of \$8,000 is warranted in light of California Speedway’s history of overall compliance with the Commission’s rules.<sup>29</sup> We disagree with California Speedway’s argument that other factors warrant a cancellation or further reduction of the forfeiture. In particular, we reject California Speedway’s argument that it acted in good faith. To the contrary, there is no evidence that California Speedway took steps to ensure that its radio operation was within the parameters imposed by Part 15. For example, California Speedway has not demonstrated that it tested the equipment or monitored the field strength to ensure that the operation did not exceed the Part 15 emission

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<sup>23</sup> 47 U.S.C. § 301.

<sup>24</sup> 47 C.F.R. § 15.1(a).

<sup>25</sup> 47 C.F.R. Part 15.

<sup>26</sup> 47 C.F.R. § 15.1(b) (emphasis added).

<sup>27</sup> 47 C.F.R. § 15.239(b).

<sup>28</sup> The term “willful,” as used in Section 503(b) of the Act, does not require a finding that the rule violation was intentional or that the violator was aware that it was committing a rule violation. Rather, the term “willful” simply requires that the violator knew it was taking the action in question, irrespective of any intent to violate the Commission’s rules. 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 or any rule or regulation of the Commission authorized by this Act ....” See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

<sup>29</sup> See *Liability of Donald W. Bishop Overland Park, Kansas*, 8 FCC Rcd 2847 (1993).

limits.<sup>30</sup> We are particularly concerned that California Speedway failed to take these steps even after receiving notice in November 2001 from the Los Angeles Office regarding the unlicensed operation. Further, the existence of this Notice coupled with the fact that California Speedway's Director of Operations was orally advised of the consequence of unlicensed operation prior to the March 24, 2002 investigation renders California Speedway's suggestion that it did not have notice regarding the operation of its equipment without merit.

14. Additionally, California Speedway's claim that the forfeiture should be reduced because the violation was minor is not supported by the facts. We do not believe that a non-licensed low power FM operation that exceeds the permissible level for such operation by more than 254 times is minor. Further, the absence of evidence of substantial harm to any third party, or that the violation was egregious, continuing or repeated, or that California Speedway derived no substantial gain from the operation are not relevant factors for reducing the forfeiture. These factors are used for upward adjustments to the base forfeiture amounts specified in Section 1.80 of the Rules.<sup>31</sup> The forfeiture at hand was issued to California Speedway for the base amount of \$10,000 as specified by Section 1.80 for operation without an instrument of authorization (*i.e.*, unlicensed operation). None of the upward adjustment factors were used in the determining the forfeiture issued to California Speedway. Thus, California Speedway's claim that the absence of these factors should result in a reduction of the forfeiture is misplaced.

15. Based on the facts of this case, we conclude that neither cancellation nor further reduction of the forfeiture is warranted. Accordingly, we find California Speedway is liable in the amount of \$8,000 for unlicensed operation of a radio station in violation of Section 301 of the Act.

#### ORDERING CLAUSES

16. 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,<sup>32</sup> California Speedway **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of eight thousand dollars (\$8,000) for unlicensed operation of a radio station in willful violation of Section 301 of the Act.

17. Payment of the forfeiture shall be made in the manner provided 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.<sup>33</sup> Payment may 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 reference NAL/Acct. No. 200232900002 and FRN

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<sup>30</sup> Indeed, California Speedway's claim that it cannot verify the violation also suggests that California Speedway made no effort to monitor its operations even after being placed on notice by the Los Angeles Office of the possible unlicensed operation. By way of comparison, in *Networx Corporation*, 17 FCC Rcd 10,572 (EB 2002), cited by California Speedway as support for its argument that the forfeiture should be reduced or cancelled, the company, which had just installed the station, had taken measurements and made adjustments in an effort to assure compliance with the rule a few days prior to the agent's inspection and discovery of the violation.

<sup>31</sup> See 47 C.F.R. § 1.80(b)(4) Note to Paragraph (b)(4).

<sup>32</sup> 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4).

<sup>33</sup> 47 U.S.C. § 504(a).

0006-0339-97. Requests for full payment under an installment plan should be sent to: Chief, Revenue and Receivables Group, 445 12<sup>th</sup> Street, S.W., Washington, D.C. 20554.<sup>34</sup>

18. **IT IS FURTHER ORDERED** that, a copy of this Order be sent by Certified Mail – Return Receipt Requested – to California Speedway, 9300 Cherry Avenue, Fontana, CA 92335 and to its counsel, E. Ashton Johnston, Piper Budnick, LLP, 1200 19<sup>th</sup> Street, NW, Washington, DC 20036.

**FEDERAL COMMUNICATIONS COMMISSION**

David H. Solomon  
Chief, Enforcement Bureau

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<sup>34</sup> See 47 C.F.R. § 1.1914.