

DOCKET FILE COPY ORIGINAL Before the
Federal Communications Commission
 Washington, D.C. 20554

In the Matter of)	WT Docket No. 07-110
)	
DAVID O. CASTLE)	FCC File No. 0002687468
)	
Application to Renew License for Amateur Radio)	
Service Station WA9KJI)	

HEARING DESIGNATION ORDER

Adopted: May 23, 2007

Released: May 24, 2007

By the Deputy Chief, Mobility Division, Wireless Telecommunications Bureau:

I. INTRODUCTION

1. By this *Hearing Designation Order*, we commence a hearing proceeding before a Commission Administrative Law Judge (ALJ) to determine whether the above-captioned application filed by David O. Castle for renewal of his license for Amateur Radio Station WA9KJI should be granted. As discussed below, the record before us indicates that Castle has apparently willfully and repeatedly engaged in unlawful Commission-related activities, including intentionally causing interference, broadcasting without communicating with any particular station, and using slanderous, harassing, and indecent language on amateur frequencies. Based on the information before us, we believe that Castle's apparent continuing course of misconduct raises a substantial and material question of fact as to whether he possesses the requisite character qualifications to be and remain a Commission licensee. Accordingly, we hereby designate his application for hearing.

II. BACKGROUND

2. Castle is the licensee of Amateur Radio Service Station WA9KJI. He filed the above-captioned application to renew the license on July 19, 2006.¹

3. On September 9, 1998, the Commission's Compliance and Information Bureau (CIB) issued a Notice of Violation ("NOV") to Castle based on a determination that he had willfully and maliciously interfered with radio communications on August 23, 1998,² in violation of Sections 97.101(d) and 97.113 of the Commission's Rules.³ The NOV restricted the hours that Castle could operate.⁴ On January 7, 1999, CIB sent Castle a Warning Notice, based on additional evidence that Castle had engaged in harassment, malicious interference, and jamming, in violation of Section 97.101(d).⁵ The Warning

¹ FCC File No. 0002687468 (filed July 19, 2006). A subsequent renewal application was dismissed as duplicative of the pending application. See FCC File No. 0002750313 (filed Sept. 13, 2006); Dismissal Letter Ref. No. 4239960 (Sept. 14, 2006).

² Official Notice of Violation, File 98CG404 (Sept. 9, 1998) (NOV).

³ 47 C.F.R. §§ 97.101(d), 97.113.

⁴ NOV at 2. Castle indicated that he would operate in compliance with the rules and proper practice, so the restriction on his hours of operation was rescinded on December 2, 1998 after no further complaints were received. See Letter dated Dec. 2, 1998 from Larry Hickman, Agent, Compliance and Information Bureau to David Castle.

⁵ See Letter dated Jan. 7, 1999 from W. Riley Hollingsworth, Legal Advisor, Compliance and Information Bureau to David O. Castle (*Warning Notice*). "Jamming" is willful interference with other communications. See, e.g., Donald
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Notice informed Castle that additional violations could result in enforcement action against his license.⁶ On May 19, 1999, CIB concluded that Castle had, on May 1, 1999, maliciously interfered with radio communications by broadcasting without communicating with any particular station in order to prevent others from using the frequency, in violation of Sections 97.101(d) and 97.113.⁷ As a result, CIB modified Castle's license to prohibit operation below 30 MHz for two years,⁸ but rescinded the modification on July 8, 1999 after Castle provided an adequate explanation of the underlying circumstances.⁹ CIB cautioned Castle, however, to refrain from intentionally interfering with other communications, and it warned him that CIB would review the matter if there were any future allegations of interference.¹⁰

4. On April 26, 2000, the Commission's Enforcement Bureau (EB)¹¹ sent Castle a letter seeking information regarding a complaint that Castle had, on March 18, 2000, deliberately interfered with ongoing communications, in alleged violation of Section 97.101(d).¹² Castle responded on May 7, 2000, generally defending his actions, but also apologizing for any possible misconduct.¹³ The number of complaints against Castle then subsided, albeit temporarily.

5. The Commission received additional complaints regarding Castle's intentional interference with other transmissions; broadcasting without communicating with any particular station; and using slanderous, harassing, and indecent language on the air, between 2004 and 2006. In addition, Castle was arrested by the Evansville, Indiana Police Department on July 20, 2006, and charged with harassment of another licensee by radio communications over an amateur repeater, a misdemeanor.¹⁴ The

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E. Gilbeau, *Decision*, 91 F.C.C. 2d 98, 99 ¶ 5 (Rev. Bd. 1982). Jamming a repeater consists of transmitting frequent or continuous messages in order to prevent the repeater from receiving other operators' transmissions. *See, e.g.*, Gary W. Kerr, *Decision*, 91 F.C.C. 2d 107, 107 ¶ 2 (Rev. Bd. 1982).

⁶ *See Warning Notice* at 2.

⁷ *See* Letter dated May 19, 1999 from W. Riley Hollingsworth, Legal Advisor, Compliance and Information Bureau to David O. Castle.

⁸ *Id.*

⁹ *See* Letter dated July 8, 1999 from W. Riley Hollingsworth, Legal Advisor, Compliance and Information Bureau to David O. Castle.

¹⁰ *Id.*

¹¹ In 1999, the Commission eliminated CIB, and consolidated its enforcement functions into EB. *See* Establishment of the Enforcement Bureau and the Consumer Information Bureau, *Order*, 14 FCC Rcd 17924 (1999).

¹² *See* Letter dated Apr. 26, 2000 from W. Riley Hollingsworth, Special Counsel, Enforcement Bureau to David O. Castle.

¹³ *See* Memorandum dated May 7, 2000.

¹⁴ While "[c]onvictions for misconduct constituting felonies are most relevant to our evaluation of an applicant's character, . . . we retain the discretion to consider serious misdemeanor convictions where appropriate." Secret Communications II, LLC, *Memorandum Opinion and Order*, 18 FCC Rcd 9139, 9150 ¶ 28 (2003) (citing Policy Regarding Character Qualifications in Broadcast Licensing, Amendment of Part 1, the Rules of Practice and Procedure, Relating to Written Responses to Commission Inquiries and the Making of Misrepresentation to the Commission by Applicants, Permittees, and Licensees, and the Reporting of Information Regarding Character Qualifications, *Policy Statement and Order*, 5 FCC Rcd 3252, 3252 (1990) (*Character Policy Statement*), *recon. on other grounds*, 6 FCC Rcd 3448 (1991), *modified on other grounds*, 7 FCC Rcd 6564 (1992)). Which misdemeanors are serious, and the effect of any such convictions, is determined on a case-by-case basis. Policy Regarding Character Qualifications in Broadcast Licensing, Amendment of Part 1, the Rules of Practice and Procedure, Relating to Written Responses to Commission Inquiries and the Making of Misrepresentation to the Commission by Applicants, Permittees, and Licensees, and the Reporting of Information Regarding Character

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police report states that after an amateur repeater owner instructed Castle on May 29, 2006 to cease using his repeater, Castle used the repeater to broadcast threats against the repeater owner. Castle pled guilty on August 2, 2006 and was fined, assessed court costs, and sentenced to 180 days incarceration, which was suspended. On October 11, 2006, EB informed Castle that his renewal application would be designated for hearing in light of his persistent pattern of FCC-related misconduct.¹⁵

6. On February 8, 2007, the trustee of the Tri-State Amateur Radio Society (TARS) sent Castle a written request that he not use the club's repeaters as a result of Castle's failure to follow the club's operational rules.¹⁶ Castle apparently ignored that request. On March 8, 2007, EB sent Castle a Warning Notice directing him to abide by the request to stay off the TARS repeaters or face enforcement action, and stating that the matter of interference to TARS would be an issue with respect to his pending renewal application.¹⁷

III. DISCUSSION

7. Pursuant to Section 309(e) of the Communications Act of 1934, as amended (the Act), the Commission is required to designate an application for evidentiary hearing if a substantial and material question of fact is presented regarding whether grant of the application would serve the public interest, convenience, and necessity.¹⁸ The character of an applicant is among those factors that the Commission considers in determining whether the applicant has the requisite qualifications to be a Commission licensee.¹⁹ Violations of the Communications Act or the Commission's rules are predictive of licensee behavior and directly relevant to the Commission's regulatory activities.²⁰ The *Character Policy Statement* is applicable to amateur and other wireless radio licensees.²¹

8. Section 333 of the Communications Act of 1934, as amended, provides that no person shall willfully or maliciously interfere with or cause interference to any radio communications of licensed stations.²² Similarly, Section 97.113(b) of the Commission's Rules generally prohibits broadcasting one-

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Qualifications, *Memorandum Opinion and Order*, 6 FCC Rcd 3448, 3450 ¶ 8 (1991), *modified on other grounds*, 7 FCC Rcd 6564 (1992).

¹⁵ See Letter dated Oct. 11, 2006 from W. Riley Hollingsworth, Special Counsel, Enforcement Bureau to David O. Castle.

¹⁶ See Letter dated Feb. 8, 2007 from Robert Pointer, President, Tri-State Amateur Radio Society to David Castle.

¹⁷ See Letter dated Mar. 8, 2007 from W. Riley Hollingsworth, Special Counsel, Spectrum Enforcement Division, Enforcement Bureau to David O. Castle. On March 26, 2007, EB received a letter from Castle's daughter denying that Castle had used the TARS repeaters. See Letter dated Mar. 16, 2007 from Donna Jean Gill to Federal Communications Commission, Enforcement Bureau, Spectrum Enforcement Division.

¹⁸ 47 U.S.C. § 309(e).

¹⁹ See 47 U.S.C. § 308(b); see also Policy Regarding Character Qualifications in Broadcast Licensing, Amendment of Part 1, the Rules of Practice and Procedure, Relating to Written Responses to Commission Inquiries and the Making of Misrepresentation to the Commission by Applicants, Permittees, and Licensees, and the Reporting of Information Regarding Character Qualifications, *Policy Statement and Order*, 5 FCC Rcd 3252, 3252 (1990) (*Character Policy Statement*), *recon. on other grounds*, 6 FCC Rcd 3448 (1991), *modified on other grounds*, 7 FCC Rcd 6564 (1992).

²⁰ Leslie D. Brewer, *Order To Show Cause, Notice of Order of Suspension, Notice of Opportunity for Hearing, and Notice of Apparent Liability for a Forfeiture*, 16 FCC Rcd 5671, 5674 ¶ 12 (2001).

²¹ *Id.*

²² 47 U.S.C. § 333; see also 47 C.F.R. § 97.101(d).

way communications on amateur frequencies.²³ In addition Section 1464 of the Criminal Code prohibits transmission of obscene, indecent, or profane language.²⁴

9. Since 1998, Castle has been warned repeatedly to refrain from intentionally interfering with radio communications; broadcasting without communicating with any particular station; causing interference on amateur repeaters; using amateur repeaters without authorization; and using indecent, slanderous, or harassing language. He has had his operating hours restricted and his operating privileges modified, and has been convicted of violating local law in the use of his Amateur license. Notwithstanding these warnings, sanctions, and the conviction, the evidence before us indicates that Castle continues to engage in such activities, in flagrant and intentional disregard of the Act and the Commission's Rules.

10. We find that Castle's continuing course of conduct raises questions as to whether he possesses the requisite character qualifications to remain a Commission licensee. Castle's history of FCC-related transgressions and apparent contempt for the Commission's regulatory authority are patently inconsistent with his responsibilities as a licensee and belie any suggestion that he can be relied upon to comply with the Commission's rules and policies in the future. Consequently, we will commence a hearing proceeding before an administrative law judge to provide Castle with an opportunity to demonstrate whether his above-captioned application should be granted.

IV. ORDERING CLAUSES

11. ACCORDINGLY, IT IS ORDERED that, pursuant to Sections 4(i) and 309(e) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 309(e), the captioned application IS DESIGNATED FOR HEARING in a proceeding before an FCC Administrative Law Judge, at a time and place to be specified in a subsequent *Order*, upon the following issues:

- a) To determine whether David O. Castle willfully and/or repeatedly violated Section 333 of the Communications Act of 1934, as amended, and Section 97.101(d) of the Commission's Rules, by intentionally interfering with radio communications;
- b) To determine whether David O. Castle willfully and/or repeatedly violated Section 97.113(b) of the Commission's Rules by broadcasting one-way communications on amateur frequencies;
- c) To determine whether David O. Castle willfully and/or repeatedly violated Section 97.113(a)(4) of the Commission's Rules by transmitting indecent language;
- d) To determine the effect, if any, of the use by David O. Castle of his amateur license to engage in criminal behavior on his qualifications to be and remain a Commission licensee;
- e) To determine, in light of the evidence adduced pursuant to the foregoing issues, whether David O. Castle is qualified to be and remain a Commission licensee;
- f) To determine, in light of the evidence adduced pursuant to the foregoing issues, whether the captioned application filed by David O. Castle should be granted.

12. IT IS FURTHER ORDERED that, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and Section 1.221(c) of the Commission's Rules, 47 C.F.R.

²³ 47 C.F.R. § 97.113(b).

²⁴ 18 U.S.C. § 1464; *see also* 47 C.F.R. § 97.113(a)(4).

§ 1.221(c), in order to avail himself of the opportunity to be heard, David O. Castle, in person or by his attorney, SHALL FILE with the Commission, within twenty calendar days of the mailing of this *Hearing Designation Order* to him, a written appearance stating that he will appear on the date fixed for hearing and present evidence on the issues specified herein.

13. IT IS FURTHER ORDERED that, pursuant to Section 1.221(c) of the Commission's Rules, 47 C.F.R. § 1.221(c), if David O. Castle fails to file a written appearance within the twenty-day period, or has not filed prior to the expiration of the twenty-day period, a petition to dismiss without prejudice, or a petition to accept, for good cause shown, a written appearance beyond the expiration of the twenty-day period, the Presiding Administrative Law Judge SHALL DISMISS the captioned application with prejudice for failure to prosecute.

14. IT IS FURTHER ORDERED that the Chief, Enforcement Bureau, shall be made a party to this proceeding without the need to file a written appearance.

15. IT IS FURTHER ORDERED that, pursuant to Sections 4(i) and 309(e) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 309(e), the burden of proceeding with the introduction of evidence and the burden of proof with respect to all of the issues specified above SHALL BE on David O. Castle.

16. IT IS FURTHER ORDERED that a copy of this *Hearing Designation Order* or a summary thereof SHALL BE PUBLISHED in the Federal Register.

17. This action is taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

Scot Stone
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