

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

In the Matter of)
Brian R. Ragan) File No.: EB-FIELDWR-12-00000609
Licensee of Amateur Radio Station KF6EGI) NAL/Acct. No.: 201232960001
Suisun City, California) FRN: 0014517353

NOTICE OF APPARENT LIABILITY FOR FORFEITURE AND ORDER

Adopted: July 2, 2012

Released: July 2, 2012

By the Senior Agent, San Francisco Office, Western Region, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture and Order (NAL), we find that Brian R. Ragan, Licensee of Amateur Radio Station KF6EGI in Suisun City, California, apparently willfully and repeatedly violated Section 301 of the Communications Act of 1934, as amended (Act),1 and apparently willfully violated Section 303(n) of the Act,2 by operating an unlicensed radio transmitter on frequency 104.9 MHz, and by failing to allow an inspection of his station by FCC personnel, respectively. We conclude that Mr. Ragan is apparently liable for a forfeiture in the amount of seventeen thousand dollars (\$17,000). In addition, we direct Mr. Ragan to submit, no later than thirty (30) calendar days from the date of this NAL, a statement signed under penalty of perjury stating that he no longer operates this unauthorized station, and will make his amateur station available for inspection.

II. BACKGROUND

2. On February 4, 2012, an agent from the Enforcement Bureau’s San Francisco Office (San Francisco Office) used direction-finding techniques to locate the source of radio frequency transmissions on frequency 104.9 MHz to Mr. Ragan’s residence in Suisun City, California. On February 25, 2012, San Francisco agents again used direction-finding techniques to locate the source of the same frequency after hearing the unlicensed station identifying itself over the air as “KBRS.” The agents determined that the signals on frequency 104.9 MHz exceeded the limits for operation under Part 15 of the Commission’s rules (Rules),3 and therefore required a license. Commission records showed no authorization issued to Mr. Ragan or to anyone else for operation of a broadcast station on frequency 104.9 MHz in Suisun City, California. The agents heard the station operating in the garage at the residence and attempted to inspect Mr. Ragan’s station, but he did not answer their knock at his door. The agents posted a Notice of Unlicensed Operation (NOUO) at Mr. Ragan’s front door for operating an unlicensed FM broadcast station

1 47 U.S.C. § 301.

2 47 U.S.C. § 303(n).

3 See 47 C.F.R. § 15.239. On February 25, 2012, the signal strength measurement was more than 8,355 times greater than the maximum permissible level.

on the frequency 104.9 MHz in Suisun City, California.⁴ Before the agents left the area of Mr. Ragan's residence, the operation ceased.

3. On February 27, 2012, Mr. Ragan contacted the San Francisco Office and spoke to an agent concerning the NOUO that was posted at his door. During his conversation with the agent, Mr. Ragan admitted to operating the broadcast station on frequency 104.9 MHz for six months. Mr. Ragan also stated that he was present at the time when the agents were knocking at his door, but was afraid to answer the door because he heard the agents say that they were with the FCC.

III. DISCUSSION

4. Section 503(b) of the Act provides that any person who willfully or repeatedly fails to comply substantially with the terms and conditions of any license, or willfully or repeatedly 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.⁵ Section 312(f)(1) of the Act defines "willful" as the "conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate" the law.⁶ The legislative history to Section 312(f)(1) of the Act clarifies that this definition of willful applies to both Sections 312 and 503(b) of the Act,⁷ and the Commission has so interpreted the term in the Section 503(b) context.⁸ The Commission may also assess a forfeiture for violations that are merely repeated, and not willful.⁹ The term "repeated" means the commission or omission of such act more than once or for more than one day.¹⁰

A. Operation without Commission Authorization

5. 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.¹¹ On February 4 and

⁴ *Brian Ragan*, On-Scene Notice of Unlicensed Operation (Enf. Bur. San Francisco Office Feb. 25, 2012) (on file in EB-FIELDWR-12-00000609).

⁵ 47 U.S.C. § 503(b).

⁶ 47 U.S.C. § 312(f)(1).

⁷ H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982) ("This provision [inserted in Section 312] defines the terms 'willful' and 'repeated' for purposes of section 312, and for any other relevant section of the act (e.g., Section 503) As defined[,] . . . 'willful' means that the licensee knew that he was doing the act in question, regardless of whether there was an intent to violate the law. 'Repeated' means more than once, or where the act is continuous, for more than one day. Whether an act is considered to be 'continuous' would depend upon the circumstances in each case. The definitions are intended primarily to clarify the language in Sections 312 and 503, and are consistent with the Commission's application of those terms . . .").

⁸ *See, e.g., Application for Review of Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991), *recons. denied*, 7 FCC Rcd 3454 (1992).

⁹ *See, e.g., Callais Cablevision, Inc.*, Notice of Apparent Liability for Monetary Forfeiture, 16 FCC Rcd 1359, 1362, para. 10 (2001) (*Callais Cablevision, Inc.*) (proposing a forfeiture for, *inter alia*, a cable television operator's repeated signal leakage).

¹⁰ Section 312(f)(2) of the Act, 47 U.S.C. § 312(f)(2), which also applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'repeated', when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day." *See Callais Cablevision, Inc.*, 16 FCC Rcd at 1362.

¹¹ 47 U.S.C. § 301.

February 25, 2012, Mr. Ragan operated an unlicensed radio station on frequency 104.9 MHz from his residence. Mr. Ragan admitted to operating the unlicensed radio station to a San Francisco agent and acknowledged that the operation had been ongoing for six months. A review of the Commission's records revealed that Mr. Ragan did not have a license to operate a radio station on frequency 104.9 MHz at that location. Because Mr. Ragan, by his own admission, consciously operated the station and did so on more than one day, the apparent violations of the Act were both willful and repeated. Based on the evidence before us, we find that Mr. Ragan apparently willfully and repeatedly violated Section 301 of the Act by operating radio transmission equipment on frequency 104.9 MHz without the required Commission authorization.

B. Licensee Failure to Comply With a Lawful Request for Inspection of Station

6. Section 303(n) of the Act states that agents of the FCC have authority to inspect all radio installations associated with stations required to be licensed or authorized by the Act.¹² On February 25, 2012, Mr. Ragan refused to make his radio station available to a Commission agent for inspection. On February 27, 2012, Mr. Ragan acknowledged to a San Francisco agent that he was aware that the FCC was requesting an inspection, but chose not to respond to the request. Mr. Ragan possesses an FCC amateur radio license (KF6EGI), a Technician Class, and has been licensed by the FCC since 2006. Mr. Ragan, as a licensed amateur radio operator for at least six years, should be aware that any radio equipment at his station must be made available for inspection at any time when requested by the FCC,¹³ and also should be aware of the proper operation of his amateur station in accordance with the Rules.¹⁴ Because Mr. Ragan consciously failed to make his radio station available to a Commission agent for inspection, we find the apparent violation willful. Based on the evidence before us, we find that, on February 25, 2012, Mr. Ragan apparently willfully violated Section 303(n) of the Act by failing to allow an inspection of his radio station and equipment.

C. Proposed Forfeiture Amount and Reporting Requirement

7. Pursuant to the Commission's *Forfeiture Policy Statement* and Section 1.80 of the Rules, the base forfeiture amount for operation without an instrument of authorization is \$10,000, and the base forfeiture amount for failure to permit inspection is \$7,000.¹⁵ In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(E) of the Act, which include the nature, circumstances, extent, and gravity of the violations, 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.¹⁶ Applying the *Forfeiture Policy Statement*, Section 1.80 of the Rules, and the statutory factors to the instant case, we conclude that Mr. Ragan is apparently liable for a forfeiture in the amount of seventeen thousand dollars (\$17,000).

8. We further order Mr. Ragan to submit a written statement, pursuant to Section 1.16 of the Rules, signed under penalty of perjury by Mr. Ragan, stating that he is in full compliance with Section 301 and is no longer engaged in the unauthorized operation on frequency 104.9 MHz or any other frequency

¹² 47 U.S.C. § 303(n).

¹³ See 47 C.F.R. § 97.103(c).

¹⁴ See 47 C.F.R. § 97.103(a).

¹⁵ *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) (*Forfeiture Policy Statement*), recons. denied, 15 FCC Rcd 303 (1999); 47 C.F.R. § 1.80.

¹⁶ 47 U.S.C. § 503(b)(2)(E).

for which he has no license, and will make his authorized amateur station available for inspection as required by the Rules. This statement must be provided to the San Francisco Office at the address listed in paragraph 11, below, within thirty (30) calendar days of the release date of this Notice of Apparent Liability for Forfeiture and Order.

IV. ORDERING CLAUSES

9. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.111, 0.204, 0.311, 0.314, and 1.80 of the Commission's rules, Brian R. Ragan is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of seventeen thousand dollars (\$17,000) for violations of Sections 301 and 303(n) of the Act.¹⁷

10. **IT IS FURTHER ORDERED** that, pursuant to Section 1.80 of the Commission's rules, within thirty (30) calendar days of the release date of this Notice of Apparent Liability for Forfeiture, Brian R. Ragan **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

11. **IT IS FURTHER ORDERED** that Brian R. Ragan **SHALL SUBMIT** a written statement, as described in paragraph 8, above, within thirty (30) calendar days of the release date of this Notice of Apparent Liability for Forfeiture and Order. The statement must be mailed to Federal Communications Commission, Enforcement Bureau, Western Region, San Francisco Office, 5653 Stoneridge Dr., Suite 105, Pleasanton, CA, 94588. Mr. Ragan shall also e-mail the written statement to WR-Response@fcc.gov.

12. Payment of the forfeiture must be made by check or similar instrument, wire transfer, or credit card, and must include the NAL/Account number and FRN referenced above. Brian R. Ragan shall send electronic notification of payment to WR-Response@fcc.gov. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted.¹⁸ 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 –

¹⁷ 47 U.S.C. §§ 503(b), 301, and 303(n); 47 C.F.R. §§ 0.111, 0.204, 0.311, 0.314, 1.80

¹⁸ An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 3101.

13. Any request for full payment 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. 20554.¹⁹ If you have questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone, 1-877-480-3201, or by e-mail, ARINQUIRIES@fcc.gov.

14. The written statement seeking reduction or cancellation of the proposed forfeiture, if any, must include a detailed factual statement supported by appropriate documentation and affidavits pursuant to Sections 1.16 and 1.80(f)(3) of the Rules.²⁰ Mail the written statement to Federal Communications Commission, Enforcement Bureau, Western Region, San Francisco Office, 5653 Stoneridge Dr., Suite 105, Pleasanton, CA, 94588, and include the NAL/Acct. No. referenced in the caption. Brian R. Ragan also shall e-mail the written response to WR-Response@fcc.gov.

15. 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.

16. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture and Order shall be sent by both Certified Mail, Return Receipt Requested, and first class mail to Brian R. Ragan at his address of record.

FEDERAL COMMUNICATIONS COMMISSION

David K. Hartshorn
Senior Agent
San Francisco Office
Western Region
Enforcement Bureau

¹⁹ See 47 C.F.R. § 1.1914.

²⁰ 47 C.F.R. §§ 1.16, 1.80(f)(3)