

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

In the Matter of
Glenn S. Yamada
Kenai, Alaska

File No.: EB-FIELDWR-12-00001081
NAL/Acct. No.: 201232780001
FRN: 0021897384

NOTICE OF APPARENT LIABILITY FOR FORFEITURE AND ORDER

Adopted: July 17, 2012

Released: July 18, 2012

By the Resident Agent, Anchorage Resident Agent Office, Western Region, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture and Order (NAL), we find that Glenn S. Yamada, a Citizens Band (CB) radio operator in Kenai, Alaska, apparently willfully and repeatedly violated Section 301 of the Communications Act of 1934, as amended (Act), and Sections 95.409(a) and 95.411(a)(1) and (b) of the Commission's rules (Rules), by operating a radio transmitter without the requisite Commission authorization. We conclude that Mr. Yamada is apparently liable for a forfeiture in the amount of twelve thousand five hundred dollars (\$12,500). In addition, no later than thirty (30) calendar days from the date of this NAL, Mr. Yamada must submit a statement signed under penalty of perjury that he is no longer engaged in unlicensed radio operations.

II. BACKGROUND

2. On January 22, 2012, the Commission received a complaint of interference to an authorized user in the aeronautical band, a safety of life service, on the frequency 21.964 MHz. The complaint concerned a male subject talking and interfering with the control and monitoring of air traffic over the North Atlantic. For several days, the Commission's High Frequency Direction Finding Center (HFDFC) monitored frequency 21.964 MHz and, on January 31, 2012, observed a subject matching the details of the complaint transmitting on the frequency 21.965 MHz. Over the next several days, the HFDFC determined that the subject was using the call "1600 Alaska"; that the subject's actual operating frequency was 27.025 MHz (CB channel 6); and that the subject's location was Kenai, Alaska.

3. On February 6, 2012, an agent from the Enforcement Bureau's Anchorage Resident Agent Office (Anchorage Office) investigated the complaint of interference. The agent, using direction-finding techniques, located the source of the interference to Mr. Yamada's residence in Kenai, Alaska. The interfering signal to frequency 21.964 MHz was determined to be on frequency 21.965 MHz and

1 47 U.S.C. § 301.

2 47 C.F.R. §§ 95.409(a), 95.411(a)(1) and (b).

3 A review of the Commission's Universal Licensing System revealed that Mr. Yamada had no individual license to operate a CB radio station.

correlated with CB station operation on CB Channel 6, frequency 27.025 MHz, emanating from Mr. Yamada's residence.<sup>4</sup> On the same day, the Anchorage agent, accompanied by a police officer from the Kenai Police Department, inspected Mr. Yamada's CB station. The agent observed a non-certificated CB transmitter and a linear amplifier as part of Mr. Yamada's CB station. Mr. Yamada admitted to the agent that the linear amplifier was capable of generating a power output of 200 watts. The agent observed that the transmitter and the linear amplifier were connected, and that the linear was connected to a transmission cable and ultimately to the directional antenna at the back of Mr. Yamada's residence. Mr. Yamada told the agent that this was his hobby setup and that he had been operating it for the last several weeks.<sup>5</sup>

### 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.<sup>6</sup> 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.<sup>7</sup> 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,<sup>8</sup> and the Commission has so interpreted the term in the Section 503(b) context.<sup>9</sup> The Commission may also assess a forfeiture for violations that are merely repeated, and not willful.<sup>10</sup> The term "repeated" means the commission or omission of such act more than once or for more than one day.<sup>11</sup>

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<sup>4</sup> Apparently, faulty equipment in use by Mr. Yamada on CB Channel 6 produced a spurious signal on frequency 21.965 MHz, the source of the interference to frequency 21.964 MHz.

<sup>5</sup> Mr. Yamada admitted to the Anchorage agent that he used the "handle" "1600 Alaska."

<sup>6</sup> 47 U.S.C. § 503(b).

<sup>7</sup> 47 U.S.C. § 312(f)(1).

<sup>8</sup> H.R. Rep. No. 97-765, 97<sup>th</sup> 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 . . . .").

<sup>9</sup> 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).

<sup>10</sup> 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).

<sup>11</sup> 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.

**A. Unlicensed Operation in the Personal Radio Service, Citizens Band**

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.<sup>12</sup> Section 95.404 of the Rules states that CB operators are not required to have individual licenses because they are authorized by this rule to operate a CB station, provided, however, that they operate the station in accordance with Subpart D of Part 95 of the Rules (CB Rules).<sup>13</sup> Section 95.409(a) of the Rules states that CB operators must use FCC certificated CB transmitters at their CB stations, and that the use of a transmitter that is not FCC certificated voids their authority to operate the station.<sup>14</sup> Furthermore, Section 95.411(a)(1) of the Rules states that CB operators may not attach external radio frequency (RF) power amplifiers (sometimes called linears or linear amplifiers) to certificated CB transmitters in any way.<sup>15</sup> Section 95.411(b) of the Rules states that there are no exceptions to this rule and that use of a power amplifier voids their authority to operate the station.<sup>16</sup>

6. On February 6, 2012, the Anchorage agent identified Mr. Yamada as the operator that the Commission's HFDFC observed interfering with safety of life operations on the frequency 21.965 MHz over multiple days in January and February 2012. The agent's inspection of Mr. Yamada's CB radio station revealed that Mr. Yamada was operating a non-certificated transmitter with an RF linear amplifier. Mr. Yamada admitted to the agent that he operated the devices for several weeks. Such operation voided Mr. Yamada's authority to operate his CB radio station under the CB Rules. As Mr. Yamada had no other authority to operate a CB station, his operation was unauthorized. Consequently, we find that Mr. Yamada apparently willfully and repeatedly violated Section 301 of the Act, and Sections 95.409(a) and 95.411(a)(1) and (b) of the Rules, by operating a CB radio station without authorization.

**B. 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 for the service is \$10,000.<sup>17</sup> 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.<sup>18</sup> Here, we find that an upward adjustment of the base forfeiture amount is warranted because of the gravity of the violations. As the record reflects, Mr. Yamada's unauthorized operations posed a significant public safety risk, given the interference caused to an authorized user in the aeronautical band (a safety of life service). Applying the *Forfeiture Policy*

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<sup>12</sup> 47 U.S.C. § 301.

<sup>13</sup> 47 C.F.R. § 95.404.

<sup>14</sup> 47 C.F.R. § 95.409(a).

<sup>15</sup> 47 C.F.R. § 95.411(a)(1).

<sup>16</sup> 47 C.F.R. § 95.411(b). The FCC will presume you have used a linear or other external RF power amplifier if the amplifier is located in the operator's premises and if there is other evidence showing that the station was operated with more power than authorized. See 47 C.F.R. § 95.410.

<sup>17</sup> *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.

<sup>18</sup> 47 U.S.C. § 503(b)(2)(E).

*Statement*, Section 1.80 of the Rules, and the statutory factors to the instant case, we conclude that Mr. Yamada is apparently liable for a forfeiture in the amount of \$12,500.

8. Furthermore, given the public safety concerns of the violations, we also direct Mr. Yamada to submit a statement signed under penalty of perjury confirming whether he is still engaged in CB operations and, if so, to state if he: (1) is using a certified CB transmitter; and (2) has not attached any linear amplifiers to his CB station. This statement must be provided to the Anchorage 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. Failure to comply with this requirement could subject the licensee to additional enforcement action.

#### 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, Glenn S. Yamada is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of twelve thousand five hundred dollars (\$12,500) for violations of Section 301 of the Act and Sections 95.409(a) and 95.411(a)(1) and (b) of the Rules.<sup>19</sup>

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 and Order, Glenn S. Yamada **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 Glenn S. Yamada **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, Anchorage Office, PO Box 231949, Anchorage, AK 99523-1949. Glenn S. Yamada shall also e-mail the written statement to [WR-Response@fcc.gov](mailto: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. Glenn S. Yamada shall send electronic notification of payment to [WR-Response@fcc.gov](mailto:WR-Response@fcc.gov) on the date said payment is made. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted.<sup>20</sup> 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

<sup>19</sup> 47 U.S.C. §§ 301, 503(b); 47 C.F.R. §§ 0.111, 0.204, 0.311, 0.314, 1.80, 95.409(a), 95.411(a)(1) and (b).

<sup>20</sup> An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

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.

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.<sup>21</sup> 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](mailto: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.<sup>22</sup> Mail the written statement to Federal Communications Commission, Enforcement Bureau, Western Region, Anchorage Resident Agent Office, P.O. Box 231949, Anchorage, AK 99523-1949, and include the NAL/Acct. No. referenced in the caption. Glenn S. Yamada also shall e-mail the written response to [WR-Response@fcc.gov](mailto: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 Glenn S. Yamada, at his address of record.

FEDERAL COMMUNICATIONS COMMISSION

David J. Charlton  
Resident Agent  
Anchorage Resident Agent Office  
Western Region  
Enforcement Bureau

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<sup>21</sup> See 47 C.F.R. § 1.1914.

<sup>22</sup> 47 C.F.R. §§ 1.16, 1.80(f)(3).