

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

In the Matter of)	
)	
Carlton Lewis)	File No.: EB-FIELDSCR-13-00008780
)	NAL/Acct. No.: 201432500002
Enid, Oklahoma)	FRN: 0023157472

FORFEITURE ORDER

Adopted: April 22, 2014

Released: April 22, 2014

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

I. INTRODUCTION

1. We impose a penalty of \$250 against Carlton Lewis for operating his Citizens Band (CB) radio with a linear amplifier, thereby voiding his authorization to operate. Mr. Lewis does not deny operating his CB radio with a linear and states that he has quit operating his CB radio. He requests cancellation of the proposed \$15,000 forfeiture because he is unable to pay it. Although we do not cancel the fine, we reduce the monetary penalty to \$250, based on Mr. Lewis's documented inability to pay.

2. In this Forfeiture Order (Order), we issue a monetary forfeiture in the amount of two hundred fifty dollars (\$250) to Mr. Lewis for willfully violating Section 301 of the Communications Act of 1934, as amended (Act), and Section 95.411 of the Commission's rules (Rules).¹ The noted violations involved Mr. Lewis's operation of his CB transmitter without authorization and with a linear amplifier.

II. BACKGROUND

3. On November 26, 2013, the Dallas Office of the Enforcement Bureau's South Central Region issued a Notice of Apparent Liability for Forfeiture (*NAL*), which found Mr. Lewis in violation of Section 301 of the Act and Section 95.411 of the Rules and proposed a \$15,000 monetary forfeiture.² As reflected in the *NAL*, the Bureau's agent determined that strong signals on 27.1850 (CB Channel 19) were emanating from Mr. Lewis's residence in Enid, Oklahoma on May 14, 2013. After knocking and waiting outside of Mr. Lewis's residence for approximately 30 minutes, the agent was allowed by Mr. Lewis to inspect his CB station. The agent, accompanied by Mr. Lewis, observed that a coaxial cable coming into the residence was connected to a linear amplifier, which was warm to the touch. The agent also observed that Mr. Lewis's CB transmitter was warm to the touch but was not connected to the coaxial cable. Mr. Lewis did not respond when asked whether he had used the linear amplifier.

4. Mr. Lewis submitted a response to the *NAL*, requesting cancellation of the forfeiture based on inability to pay.³ Mr. Lewis states that his only source of income is Social Security benefits. He also does not deny operating the linear amplifier and asserts that he has quit operating his CB radio.

¹ 47 U.S.C. § 301; 47 C.F.R. § 95.411.

² *Carlton Lewis*, Notice of Apparent Liability for Forfeiture, 28 FCC Rcd 15975 (Enf. Bur. 2013). A comprehensive recitation of the facts and history of this case can be found in the *NAL* and is incorporated herein by reference.

³ See Letter from Carlton Lewis mailed to Dallas Office, South Central Region, Enforcement Bureau (rec. Dec. 27, 2013) (on file in EB-FIELDSCR-13-00008780).

III. DISCUSSION

5. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Act,⁴ Section 1.80 of the Rules,⁵ and the *Forfeiture Policy Statement*.⁶ In examining Mr. Lewis's 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.⁷ As discussed below, we have fully considered Mr. Lewis's response to the *NAL* in light of these statutory factors and find that cancellation of the forfeiture is not warranted; however, we find that reduction of the forfeiture is justified based solely on his inability to pay claim.

A. Mr. Lewis Engaged in Unlicensed CB Operations

6. We affirm the *NAL*'s finding that Mr. Lewis willfully violated Section 301 of the Act and Section 95.411 of the Rules.⁸ 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.⁹ 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).¹⁰ Operation of CB stations in a manner that is inconsistent with the CB Rules requires a license pursuant to Section 301 of the Act.¹¹ Section 95.411(a) 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.¹² Section 95.411(b) of the Rules states that there are no exceptions to this rule and that use of a power amplifier voids the authority to operate the station.¹³ The Commission will presume an individual has used a linear or other external RF power amplifier if the amplifier is located on the individual's premises and if there is other evidence showing that a CB station was operated with more power than allowed by the Rules.¹⁴ It is undisputed that on May 14, 2013, Mr. Lewis operated his CB transmitter with a linear amplifier, thereby voiding his authorization to operate his CB station. Therefore, based on the evidence before us, we conclude that Mr. Lewis willfully violated Section 301 of the Act and Section 95.411 of the Rules.

⁴ 47 U.S.C. § 503(b).

⁵ 47 C.F.R. § 1.80.

⁶ *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*).

⁷ 47 U.S.C. § 503(b)(2)(E).

⁸ *Id.* § 301; 47 C.F.R. § 95.411. *See NAL*, *supra* note 2.

⁹ 47 U.S.C. § 301.

¹⁰ 47 C.F.R. § 95.404.

¹¹ 47 U.S.C. § 301.

¹² 47 C.F.R. § 95.411(a).

¹³ *Id.* § 95.411(b).

¹⁴ *Id.* § 95.411(c).

B. Inability to Pay Claim

7. Mr. Lewis requests cancellation 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.¹⁵ Based on the financial documents provided by Mr. Lewis, we find sufficient basis to reduce the forfeiture to \$250.¹⁶ However, we caution Mr. Lewis that a party's inability to pay is only one factor in our forfeiture calculation analysis, and is not dispositive.¹⁷ We have previously rejected inability to pay claims in cases of repeated or otherwise egregious violations.¹⁸ Therefore, future violations of this kind may result in significantly higher forfeitures that may not be reduced due to Mr. Lewis's financial circumstances. Accordingly, after consideration of the entire record (including Mr. Lewis's response to the *NAL*), the *Forfeiture Policy Statement*, and the factors set forth in Section 503(b)(2)(E) of the Act,¹⁹ we find that, although cancellation of the monetary forfeiture is not warranted, a reduction of the forfeiture amount from \$15,000 to \$250 is appropriate in this case.

IV. ORDERING CLAUSES

8. 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(f)(4) of the Commission's rules, Carlton Lewis **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of two hundred fifty dollars (\$250) for violations of Section 301 of the Act and Section 95.411 of the Rules.²⁰

9. 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.²¹ 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.²² Carlton Lewis shall send electronic notification of payment to SCR-Response@fcc.gov on the date said payment is made. The payment must

¹⁵ See *PJB Commc'ns of Va., Inc.*, Forfeiture Order, 7 FCC Rcd 2088, 2089 (1992) (forfeiture not deemed excessive where it represented approximately 2.02 percent of the violator's gross revenues); *Local Long Distance, Inc.*, Forfeiture Order, 16 FCC Rcd 24385 (2000) (forfeiture not deemed excessive where it represented approximately 7.9 percent of the violator's gross revenues); *Hoosier Broad. Corp.*, Forfeiture Order, 15 FCC Rcd 8640 (2002) (forfeiture not deemed excessive where it represented approximately 7.6 percent of the violator's gross revenues).

¹⁶ This forfeiture amount falls within the percentage range that the Commission has previously found acceptable. See *supra* note 15. If Mr. Lewis finds it financially infeasible to make full payment of this amount within 30 days, he can request an installment plan, as described in paragraph 10, *infra*, of this Forfeiture Order.

¹⁷ See 47 U.S.C. § 503(b)(2)(E) (requiring Commission to 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 such other matters as justice may require).

¹⁸ *Kevin W. Bondy*, Forfeiture Order, 26 FCC Rcd 7840 (Enf. Bur., Western Region 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, DA 13-199 (Enf. Bur. Feb. 15, 2013); *Hodson Broad. Corp.*, 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).

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

²⁰ 47 U.S.C. §§ 301, 503(b); 47 C.F.R. §§ 0.111, 0.204, 0.311, 0.314, 1.80(f)(4), 95.411.

²¹ 47 C.F.R. § 1.80.

²² 47 U.S.C. § 504(a).

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.²³ 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.

10. 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. 20554.²⁴ 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.

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

FEDERAL COMMUNICATIONS COMMISSION

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

²³ An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

²⁴ See 47 C.F.R. § 1.1914.