

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

In the Matter of)	
)	
Drew Buckley)	File No.: EB-FIELDNER-13-00012151
)	NAL/Acct. No.: 201432400008
Bay Shore, New York)	FRN: 0023486996

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: June 26, 2014

Released: June 26, 2014

By the District Director, Philadelphia Office, Northeast Region, Enforcement Bureau:

I. INTRODUCTION

1. We propose a penalty of \$25,000 against Drew Buckley of Bay Shore, New York, for operating a radio transmitter without a license and interfering with the licensed radio communications system of the Melville Fire District of New York (Melville). The fact that Mr. Buckley intentionally and maliciously interfered with frequencies used by Melville to communicate during fire emergencies demonstrates a deliberate disregard for public safety and the Commission's authority and rules, warranting a substantial penalty above our normal sanction for unlicensed operations that interfere with licensed communications.

2. In this Notice of Apparent Liability for Forfeiture (*NAL*), we find that Mr. Buckley apparently willfully and repeatedly violated Sections 301 and 333 of the Communications Act of 1934, as amended (Act),¹ by operating an unlicensed radio transmitter on an unauthorized frequency and causing interference to a public safety licensee in Melville, New York.

II. BACKGROUND

3. On October 31, 2013, Melville, the licensee of Private Land Mobile Station WIG703, filed a complaint with the Enforcement Bureau alleging that an unidentified male made unauthorized transmissions on its radio communications system, specifically its repeater system. Melville is licensed to operate a repeater system on the frequency pair 474.2875 MHz (repeater input frequency) and 471.2875 MHz (repeater output frequency). The repeater frequency pair is allocated to public safety stations, and private citizens are not eligible to hold an authorization for a public safety station that operates on a frequency in the Public Safety Pool.²

4. Melville reported that the unauthorized transmissions typically consisted of chanting and heavy breathing. When these unauthorized transmissions occurred during fire emergencies, Melville firefighters were forced to switch to an alternate frequency to effectively communicate with each other and with the dispatchers. Melville also reported that all of the unauthorized transmissions had the same unique identifying code, indicating that the unauthorized transmissions were coming from a radio programmed with a code assigned to Fire Department Rescue Officers in the Suffolk County Fire Service.³

¹ 47 U.S.C. §§ 301, 333.

² See 47 C.F.R. § 90.20(c)(3).

³ The unique identifying code is a Microsoft Data Access Component (MDAC) code, which sends bursts of data

5. Agents from the Philadelphia Office conducted an investigation of the unauthorized transmissions by monitoring the repeater input frequency in the vicinity of Melville, New York between November 2 and November 6, 2013.⁴ On November 5, 2013, using direction-finding techniques, the agents traced the source of the interfering transmissions to Mr. Buckley's residence in Bay Shore, New York. Agents heard Mr. Buckley interfere with Melville's licensed communications by continuing to transmit while fire department personnel were using the radio communications system to respond to a fire emergency. The agents observed two vehicles parked in the driveway of Mr. Buckley's residence, which they later determined were registered to Mr. Buckley. On November 6, 2013, in the morning and the evening, agents again observed unauthorized transmissions coming from Mr. Buckley's residence on the repeater input frequency. The Commission's records showed that no authorization was issued to anyone to operate a Private Land Mobile Station at the location of Mr. Buckley's residence.⁵

6. Melville requested assistance from the Suffolk County Police Department and on November 30, 2013, police officers interviewed Mr. Buckley at his residence. Mr. Buckley showed the police officers numerous portable radios and two vehicular mobile radios at the residence. The police officers, with the assistance of Melville's Fire Chief, confirmed that two of the portable radios could transmit on the repeater input frequency and activate the Melville repeater.⁶ The officers also confirmed that one of the two portable radios transmitted the unique identifying code that Melville observed when the unauthorized transmissions interfered with its communications. As a result, police officers arrested Mr. Buckley on November 30, 2013, and his case is pending in Suffolk County District Court.⁷

III. DISCUSSION

7. 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.⁸ 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.⁹

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over a two-way radio system's analog voice channel. With each transmission, the data burst from the interferer matched the MDAC code assigned to Fire Department Rescue Officers in the Suffolk County Fire Service. In this case, the code transmitted by Mr. Buckley's radio was MDAC 5501.

⁴ On November 2, 3, and 4, 2013, agents observed unauthorized transmissions across the Melville repeater system, but had not yet identified the source of those transmissions as Mr. Buckley's residence.

⁵ We also note that Part 15 of the Commission's rules sets out the conditions and technical requirements under which certain radio transmission devices may be used without a license. In relevant part, Section 15.209 of the Commission's rules provides that non-licensed transmissions in the 216-960 MHz band is permitted only if the field strength of the transmission does not exceed 200 μ V/m at three meters. 47 C.F.R. § 15.209. Agents observed the transmissions on the repeater input frequency at a distance of approximately 0.5 miles from Mr. Buckley's residence and determined that the transmissions' field strength exceeded allowable Part 15 levels.

⁶ The police officers made several test transmissions with the various radios found at Mr. Buckley's residence. Melville's Fire Chief monitored the repeater output on 461.2875 MHz with his portable radio to determine if any of the test transmissions activated the Melville repeater and provided the unique MDAC code. The Melville Fire Chief heard the police officer's voice across the Melville repeater when the police officer used one of Mr. Buckley's portable radios.

⁷ Mr. Buckley was arrested for Obstruction of Governmental Administration in the Second Degree, a Class A misdemeanor under Section 195.05 of the New York Penal Law. N.Y. Penal Law § 195.05. The case was assigned Case # 2013SU051815 in the Suffolk County District Court.

⁸ 47 U.S.C. § 503(b).

⁹ 47 U.S.C. § 312(f)(1).

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,¹⁰ and the Commission has so interpreted the term in the Section 503(b) context.¹¹ The Commission may also assess a forfeiture for violations that are merely repeated, and not willful.¹² The term “repeated” means the commission or omission of such act more than once or for more than one day.¹³

A. Unlicensed Radio Transmissions

8. The evidence in this case is sufficient to establish that Mr. Buckley violated Section 301 of the Act. 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.¹⁴ Using radio direction finding techniques, agents from the Philadelphia Office determined that an unlicensed radio transmitter was operating on Melville’s repeater input frequency from Mr. Buckley’s residence in Bay Shore, New York on November 5 and 6, 2013. A review of the Commission’s records revealed that no license or authorization was issued to Mr. Buckley to operate a radio station on this frequency from his residence. Mr. Buckley had radio transmitters in his home capable of operating on Melville’s radio communications system. Because Mr. Buckley consciously operated the station and did so on more than one day, the apparent violations of the Act were both willful and repeated. We therefore conclude, based on the evidence before us, that Mr. Buckley apparently willfully and repeatedly violated Section 301 of the Act by operating radio transmission equipment without the required Commission authorization.

B. Interference with Licensed Communications

9. The evidence in this case is also sufficient to establish that Mr. Buckley violated Section 333 of the Act. Section 333 of the Act states that “[n]o person shall willfully or maliciously interfere with or cause interference to any radio communications of any station licensed or authorized by or under this Act or operated by the United States Government.”¹⁵ The legislative history for Section 333 of the Act identifies willful and malicious interference as “intentional jamming, deliberate transmission on top of the transmissions of authorized users already using specific frequencies in order to obstruct their communications, repeated interruptions, and the use and transmission of whistles, tapes, records, or other

¹⁰ 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”).

¹¹ See, e.g., *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388, para. 5 (1991), *recons. denied*, 7 FCC Rcd 3454 (1992).

¹² 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).

¹³ 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, para. 9.

¹⁴ 47 U.S.C. § 301.

¹⁵ 47 U.S.C. § 333.

types of noisemaking devices to interfere with the communications or radio signals of other stations.”¹⁶

10. Mr. Buckley’s unauthorized transmissions on Melville’s repeater input frequency disrupted communications between dispatchers and firefighters during fire emergencies and forced Melville to switch to an alternate frequency. On November 5, 2013, agents in the Philadelphia Office heard Mr. Buckley interfere with Melville’s licensed communications by continuing to transmit while fire department personnel were using the radio communications system to respond to a fire emergency. Because Mr. Buckley knowingly operated on an unauthorized frequency and disrupted Melville’s radio communications during fire emergencies, the apparent violations of the Act were willful. We therefore conclude, based on the evidence before us, that Mr. Buckley apparently willfully violated Section 333 of the Act by maliciously interfering with licensed communications of the Melville Fire District.

C. Proposed Forfeiture

11. Pursuant to the Commission’s *Forfeiture Policy Statement* and Section 1.80 of the Commission’s rules, the base forfeiture amount for operation without an instrument of authorization is \$10,000, and the base forfeiture amount for interference is \$7,000.¹⁷ The Commission retains the discretion, however, to issue a higher or lower forfeiture than provided in the *Forfeiture Policy Statement* or to apply alternative or additional sanctions as permitted by the statute, subject to the statutory cap.¹⁸ In assessing the appropriate monetary penalty for the misconduct at issue, we must 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.¹⁹

12. We find Mr. Buckley’s misconduct particularly egregious because his unlicensed operation involved willful and malicious interference to the communications of the Melville Fire District. This interference hampered firefighting operations and demonstrated a deliberate disregard for public safety and the Commission’s authority and rules. Thus, we find that an upward adjustment of \$8,000 to the combined base forfeiture of \$17,000 is warranted.²⁰ Applying the *Forfeiture Policy Statement*, Section 1.80 of the Commission’s rules, and the statutory factors to the instant case, we conclude that Mr. Buckley is apparently liable for a total forfeiture in the amount of \$25,000.

IV. ORDERING CLAUSES

13. 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, Drew Buckley is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the

¹⁶ H.R. Rep. No. 101-316, at 8 (1989).

¹⁷ *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.

¹⁸ See 47 C.F.R. § 1.80(b)(8), Note (“The Commission and its staff retain the discretion to issue a higher or lower forfeiture than provided in the guidelines, to issue no forfeiture at all, or to apply alternative or additional sanctions as permitted by the statute.”).

¹⁹ 47 U.S.C. § 503(b)(2)(E).

²⁰ See, e.g., *Estevan J. Gutierrez*, Notice of Apparent Liability for Forfeiture, 26 FCC Rcd 12542 (Enf. Bur. 2011), *aff’d*, Forfeiture Order, 28 FCC Rcd 15486 (Enf. Bur. 2013) (proposing \$8,000 upward forfeiture adjustment where individual operated on a police frequency without authorization causing interference); *Terry L. VanVolkenburg*, Notice of Apparent Liability for Forfeiture, 28 FCC Rcd 1927 (Enf. Bur. 2013) (same).

amount of twenty-five thousand dollars (\$25,000) for violations of Sections 301 and 333 of the Act.²¹

14. **IT IS FURTHER ORDERED** that, pursuant to Section 1.80 of the Commission's rules,²² within thirty (30) calendar days of the release date of this Notice of Apparent Liability for Forfeiture, Drew Buckley **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

15. 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. Drew Buckley shall also send electronic notification on the date said payment is made to NER-Response@fcc.gov. 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.

16. 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.

17. 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 Commission's rules.²⁵ Mail the written statement to Federal Communications Commission, Enforcement Bureau, Northeast Region, Philadelphia Office, One Oxford Valley Building, Suite 404, 2300 East Lincoln Highway, Langhorne, Pennsylvania 19047 and include the

²¹ 47 U.S.C. §§ 301, 333, 503(b); 47 C.F.R. §§ 0.111, 0.204, 0.311, 0.314, 1.80.

²² 47 C.F.R. § 1.80.

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.

²⁵ 47 C.F.R. §§ 1.16, 1.80(f)(3).

NAL/Acct. No. referenced in the caption. Drew Buckley also shall e-mail the written response to NER-Response@fcc.gov.

18. 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 principles (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.

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

FEDERAL COMMUNICATIONS COMMISSION

David C. Dombrowski
District Director
Philadelphia Office
Northeast Region
Enforcement Bureau