

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of)	
)	
Michael Guernsey)	File No.: EB-FIELDNER-14-00014398
)	NAL/Acct. No.: 201432360001
Licensee of Amateur Radio Station KZ8O)	FRN: 0009895590
Parchment, Michigan)	

FORFEITURE ORDER

Adopted: July 22, 2015

Released: July 22, 2015

By the Regional Director, Northeast Region, Enforcement Bureau:

I. INTRODUCTION

1. We impose a penalty of \$22,000 against amateur radio station operator Michael Guernsey for intentionally causing interference to other amateur radio operators and failing to provide station identification. Amateur radio frequencies are shared and licensees may not monopolize any frequency for their exclusive use. Deliberate interference and failure to transmit call sign information undermines the purpose of the Amateur Radio Service by preventing communications among licensed users and disrupts the orderly administration of the Amateur Radio Service by preventing licensed users from identifying a transmission's source. Mr. Guernsey denies that he was responsible for causing the interference and failing to identify, arguing that since the agents did not inspect his station they could have confused his signal for the signal of nearby amateur operators. Mr. Guernsey also requests forfeiture cancellation or reduction based on his purported inability to pay. Considering the entire record and the factors discussed below, we find no reason to cancel, withdraw, or reduce the proposed penalty, and we therefore assess the \$22,000 forfeiture the Enforcement Bureau (Bureau) previously proposed.

II. BACKGROUND

2. On March 7, 2014, in response to multiple complaints of intentional interference, agents from the Bureau's Detroit Office (Detroit Office) used mobile direction finding techniques to identify the source of transmissions interfering with amateur radio operations to Mr. Guernsey's residence.¹ On July 22, 2014, the Bureau issued the *NAL* proposing a \$22,000 forfeiture against Mr. Guernsey for his apparent violations of Section 333 of the Communications Act of 1934, as amended (Act), and Sections 97.101(d) and 97.119(a) of the Commission's rules (Rules).² On August 15, 2014, Mr. Guernsey filed a response to the *NAL*.³ In his *NAL Response*, Mr. Guernsey argues that the *NAL* should be cancelled because the Detroit Office agents did not inspect his station and the Bureau therefore did not properly establish that it was his station causing the interference.⁴ Mr. Guernsey also contends that the source(s) of the interference could have been any number of amateur operators who live with a quarter mile of his location.⁵ Finally, Mr.

¹ *Michael Guernsey*, Notice of Apparent Liability for Forfeiture, 29 FCC Rcd 8586, 8585, para. 3 (Enf. Bur. 2014) (*NAL*). The *NAL* includes a more complete discussion of the facts and history of this case and is incorporated herein by reference.

² *Id.* at 8588–89, paras. 9–10; 47 U.S.C. § 333; 47 C.F.R. §§ 97.101(d), 97.119(a).

³ Response to Notice of Apparent Liability for Forfeiture by Michael Guernsey (Aug. 15, 2014) (*NAL Response*).

⁴ *Id.* at 1.

⁵ *Id.*

Guernsey states that he is “unable to pay” the forfeiture proposed in the *NAL* because he lives on disability, and provides his federal tax returns in support of a forfeiture reduction.⁶

III. DISCUSSION

3. The Bureau proposed a forfeiture in this case in accordance with Section 503(b) of the Act,⁷ Section 1.80 of the Rules,⁸ and the Commission’s *Forfeiture Policy Statement*.⁹ When we assess forfeitures, Section 503(b)(2)(E) requires that we take into account 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.”¹⁰ As discussed below, we have fully considered Mr. Guernsey’s *NAL Response*, but find none of the arguments persuasive. We therefore affirm the \$22,000 forfeiture proposed in the *NAL*.

A. The Bureau Established that Mr. Guernsey Caused Intentional Interference to Amateur Communications and Failed to Identify

4. Mr. Guernsey argues that the Bureau failed to establish that it was him playing music, making animal sounds, and failing to transmit call sign information because the agents failed to inspect his station.¹¹ Mr. Guernsey further asserts that there are other operators with a quarter mile of his residence and maintains that one of them might have been the source of the interference.¹² We disagree. Agents from the Detroit Office performed close-in direction finding and positively confirmed the source of the interfering transmission as 2026 Travis Road, Parchment, Michigan, the address of record for Mr. Guernsey’s amateur station KZ8O. Although the agents did not physically inspect his station, the agents monitored the transmissions emanating from Mr. Guernsey’s station for approximately 40 minutes and heard him transmit a prerecorded song and various animal noises on the frequency without transmitting his assigned call sign. Further, Mr. Guernsey acknowledges that he received a prior warning from the Commission regarding causing interference to other amateur radio operators and admits that he may have caused interference to ongoing amateur communications because he “was not able to hear them.”¹³ Indeed, Mr. Guernsey has a long history of causing interference to other amateur radio operators and has been warned repeatedly in writing by the Bureau that his actions violate the Act and Rules.¹⁴ As a result, we affirm the *NAL*’s finding

⁶ *Id.* at 2–3, Attachment.

⁷ 47 U.S.C. § 503(b).

⁸ 47 C.F.R. § 1.80.

⁹ *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).

¹⁰ 47 U.S.C. § 503(b)(2)(E).

¹¹ *NAL Response* at 1.

¹² *Id.*

¹³ *Id.* at 2.

¹⁴ See Letter from Laura Smith, Esq., Special Counsel, Enforcement Bureau, Federal Communications Commission, to Michael Guernsey (Dec. 10, 2012) (on file in EB-FIELDNER-14-00014398); Letter from W. Riley Hollingsworth, Esq., Special Counsel, Enforcement Bureau, Federal Communications Commission, to Michael Guernsey (May 9, 2003) (on file in EB-FIELDNER-14-00014398); Letter from W. Riley Hollingsworth, Esq., Special Counsel, Enforcement Bureau, Federal Communications Commission, to Michael Guernsey (May 20, 2002) (on file in EB-FIELDNER-14-00014398); Letter from W. Riley Hollingsworth, Esq., Special Counsel, Enforcement Bureau, Federal Communications Commission, to Michael Guernsey (Dec. 6, 2001) (on file in EB-FIELDNER-14-00014398); Letter from W. Riley Hollingsworth, Esq., Special Counsel, Enforcement Bureau, Federal Communications Commission, to Michael Guernsey (Nov. 14, 2000) (on file in EB-FIELDNER-14-00014398);

(continued...)

that Mr. Guernsey caused intentional interference to licensed communications and failed to properly identify his station.¹⁵

B. Mr. Guernsey Failed to Demonstrate an Inability to Pay the Forfeiture

5. Mr. Guernsey also seeks a reduction or cancellation of the proposed forfeiture based on his purported inability to pay and provided financial documentation supporting his claim.¹⁶ As indicated above, Section 503(b)(2)(E) of the Act states that, in determining the amount of a forfeiture penalty, the Commission shall 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.¹⁷ We have reviewed Mr. Guernsey's tax records, which, standing alone might arguably support his asserted inability to pay argument. The ability to pay, however, is just one of the criterion the Commission considers when determining the appropriate forfeiture amount. Here, Mr. Guernsey's violations include repeated acts of intentional and malicious interference designed to prevent other amateur radio operators from conducting legitimate communications in violation of Section 333 of the Act.¹⁸ 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 the Act or operated by the United States Government."¹⁹ Congress enacted Section 333 of the Act to explicitly provide the Commission with the authority to deal with willful, repeated, or malicious acts of interference.²⁰ Despite repeated warnings from the Bureau regarding his on-air behavior, Mr. Guernsey's violations included the deliberate playing of music on top of the transmissions of other amateur operators in order to obstruct their ability to communicate on the frequency. Mr. Guernsey further used various animal noises to prevent the communications of other stations with whom he had a longstanding and well-documented dispute. The egregiousness of Mr. Guernsey's repeated willful acts of malicious interference warrant assessment of the full forfeiture amount proposed. Nothing in the record in this case, including Mr. Guernsey's financial condition, warrants any leniency or mitigation of that amount.²¹

6. Based on the record before us and in light of the applicable statutory factors, we conclude that Mr. Guernsey willfully violated Section 333 of the Act and Sections 97.101(d) and 97.119(a) of the Rules by intentionally interfering with other licensed amateur radio communications and failing to transmit

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Letter from W. Riley Hollingsworth, Esq., Special Counsel, Enforcement Bureau, Federal Communications Commission, to Michael Guernsey (Oct. 17, 2000) (on file in EB-FIELDNER-14-00014398); Letter from W. Riley Hollingsworth, Esq., Special Counsel, Enforcement Bureau, Federal Communications Commission, to Michael Guernsey (Nov. 4, 1998) (on file in EB-FIELDNER-14-00014398).

¹⁵ *NAL*, 29 FCC Rcd at 8587, para. 5.

¹⁶ *NAL Response* at 2–3, Attachment.

¹⁷ 47 U.S.C. § 503(b)(2)(E).

¹⁸ *See supra* note 14.

¹⁹ 47 U.S.C. § 333.

²⁰ H.R. Rep. No. 101-316, at 8 (1989).

²¹ *See, e.g., Kevin W. Bondy*, Memorandum Opinion and Order, 28 FCC Rcd 1170 (Enf. Bur. 2013), *aff'g* Forfeiture Order, 26 FCC Rcd 7840 (Enf. Bur. 2011) (repeated violation of Rules outweighed inability to pay argument); *see also Hodson Broad. Corp.*, Forfeiture Order, 24 FCC Rcd 13699 (Enf. Bur. 2009) (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). If Mr. Guernsey finds it financially infeasible to make full payment of forfeiture imposed within 30 days, he can request an installment plan, as described in paragraph 10 of this Forfeiture Order.

his assigned call sign.²² We further find after considering the entire record and the factors listed above, that Mr. Guernsey is liable for a forfeiture in the amount of \$22,000.

IV. ORDERING CLAUSES

7. **IT IS ORDERED** that, pursuant to Section 503(b) of the Act²³ and Section 1.80 of the Rules,²⁴ Michael Guernsey **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of twenty two thousand dollars (\$22,000) for willfully violating Section 333 of the Act and Sections 97.101(d) and 97.119(a) of the Rules.²⁵

8. 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 of this Forfeiture Order.²⁶ 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.²⁷

9. 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. Michael Guernsey shall send electronic notification of payment to NER-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.²⁸ When completing the 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 that should be followed based on the form of payment selected:

- Payment by check or money order must be made payable to the order of the Federal Communications Commission. Such payments (along with completed Form 159) must be mailed to the 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.

²² 47 U.S.C. §333; 47 C.F.R §§ 97.101(d), 97.119(a).

²³ 47 U.S.C. § 503(b).

²⁴ 47 C.F.R. § 1.80.

²⁵ 47 U.S.C. § 333; 47 C.F.R. §§ 97.101(d), 97.119(a).

²⁶ 47 C.F.R. § 1.80.

²⁷ 47 U.S.C. § 504(a).

²⁸ An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

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, SW, Room 1-A625, Washington, DC 20554.²⁹ Questions regarding payment procedures should be directed to the Financial Operations Group Help Desk by telephone, 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 first class mail and certified mail, return receipt requested, to Michael Guernsey, 2026 Travis Road, Parchment, Michigan 49004.

FEDERAL COMMUNICATIONS COMMISSION

G. Michael Moffitt
Regional Director
Northeast Region
Enforcement Bureau

²⁹ See 47 C.F.R. § 1.1914.