

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

In the Matter of)	
)	
Brian Crow)	File No.: EB-FIELDNER-14-00014489
)	NAL/Acct. No.: 201432400010
Licensee of Amateur Radio Station K3VR)	FRN: 0009895590
North Huntingdon, Pennsylvania)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: July 22, 2014

Released: July 22, 2014

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

I. INTRODUCTION

1. We propose a penalty of \$11,500 against amateur radio station operator Brian Crow 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 undermines the utility of the Amateur Radio Service by preventing communications among licensed users that comply with the Commission's rules. In addition, the failure to transmit call sign information disrupts the orderly administration of the Amateur Radio Service by preventing licensed users from identifying a transmission's source. Mr. Crow was warned previously in writing by the Enforcement Bureau about causing interference to other amateur radio operators, warranting an increased penalty.

2. In this Notice of Apparent Liability for Forfeiture (NAL), we find that Mr. Crow, licensee of Amateur Radio Station K3VR in North Huntingdon, Pennsylvania, apparently willfully violated 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) by causing intentional interference to licensed radio operations and failing to transmit his assigned call sign in the Amateur Radio Service.¹

II. BACKGROUND

3. On March 14, 2014, in response to several complaints of intentional interference from amateur licensees on the frequency 14.313 MHz, agents from the Enforcement Bureau's Philadelphia Office (Philadelphia Office) used mobile direction finding techniques to identify the source of the transmissions to 12201 Longview Drive, North Huntingdon, Pennsylvania, the location of Mr. Crow's amateur station K3VR. The agents monitored the transmissions emanating from Mr. Crow's station for approximately three hours in the morning and heard him transmit Slow-Scan Television (SSTV) emissions and a prerecorded voice transmission of another amateur station on the frequency.² These transmissions prevented other amateur licensees from communicating over the frequency. During the monitoring period, the agents did not hear Mr. Crow transmit his assigned call sign. Later that day, the agents approached Mr. Crow's residence, identified themselves, and requested to inspect the radio station located on the premises. Mr. Crow allowed the agents to inspect the station and they confirmed that it was capable of operating on 14.313

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

² The Commission's High Frequency Direction Finding Center (HFDF), using long range direction finding techniques, also traced the source of the transmissions to an area containing Mr. Crow's station.

MHz. The agents interviewed Mr. Crow, who stated he did not operate his amateur radio station that morning and was not home when the interfering transmissions occurred.

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.³ 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.⁴ 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,⁵ and the Commission has so interpreted the term in the Section 503(b) context.⁶

A. Causing Intentional Interference to Licensed Communications

5. The evidence in this case is sufficient to establish that Mr. Crow violated Section 333 of the Act and Section 97.101(d) of the Rules. 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.”⁷ 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 types of noisemaking devices to interfere with the communications or radio signals of other stations.”⁸ Section 97.101(d) of the Rules states that “[n]o amateur operator shall willfully or maliciously interfere with or cause interference to any radio communication or signal.”⁹

6. On March 14, 2014, agents from the Philadelphia Office located the source of interference to frequency 14.313 MHz to Mr. Crow’s amateur station K3VR. Although Mr. Crow stated he was not present at his house at the time, the agents heard Mr. Crow intentionally interfering with other amateur licensees by transmitting SSTV emissions and prerecorded communications from other amateur radio operators on the frequency.¹⁰ These transmissions were a deliberate act to monopolize the

³ 47 U.S.C. § 503(b).

⁴ 47 U.S.C. § 312(f)(1).

⁵ 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 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”).

⁶ 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).

⁷ 47 U.S.C. § 333.

⁸ H.R. Rep. No. 101-316, at 8 (1989).

⁹ 47 C.F.R. § 97.101(d). See 47 C.F.R. § 97.101(a) (stating that “each amateur radio station must be operated in accordance with good engineering and good amateur practice”).

¹⁰ The agents kept Mr. Crow’s residence under constant observation while they monitored frequency 14.313 MHz and saw no one enter or leave the residence until after the interfering transmissions occurred.

frequency and prevent other amateur radio operators from conducting legitimate communications.¹¹ Based on the evidence before us, we find that Mr. Crow apparently willfully violated Section 333 of the Act and Section 97.101(d) of the Rules by intentionally interfering with other licensed amateur radio communications.

B. Failure to Transmit a Call Sign Identification

7. The evidence in this case also is sufficient to establish that Mr. Crow violated Section 97.119(a) of the Rules. Section 97.119(a) of the Rules states that “[e]ach amateur station . . . must transmit its assigned call sign on its transmitting channel at the end of each communication, and at least every 10 minutes during a communication, for the purpose of clearly making the source of the transmissions from the station known to those receiving the transmissions.”¹² On March 14, 2014, agents from the Philadelphia Office monitored frequency 14.313 MHz for approximately three hours and heard transmissions by Mr. Crow in which he failed to transmit his assigned call sign. Based on the evidence before us, we find that Mr. Crow apparently willfully violated Section 97.119(a) of the Rules by failing to transmit his assigned call sign.

C. Proposed Forfeiture

8. Pursuant to the Commission’s *Forfeiture Policy Statement* and Section 1.80 of the Rules, the base forfeiture amount for interference is \$7,000 and the base forfeiture amount for failure to provide station identification is \$1,000.¹³ We retain 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 statute, subject to the statutory cap.¹⁴ In assessing the monetary forfeiture amount, 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.¹⁵

9. Mr. Crow was warned previously in writing by the Enforcement Bureau that causing interference to other amateur radio operators violated the Act and Rules.¹⁶ The fact that Mr. Crow

¹¹ Specifically, evidence indicates that the transmissions were aimed at interfering with two amateur radio operators with whom Mr. Crow has had a longstanding and well-documented dispute.

¹² 47 C.F.R. § 97.119(a).

¹³ *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.

¹⁴ 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 statute.”).

¹⁵ 47 U.S.C. § 503(b)(2)(E).

¹⁶ See E-mail from Laura Smith, Esq., Special Counsel, Enforcement Bureau, Federal Communications Commission, to Brian Crow (Dec. 10, 2012) (on file in EB-FIELDNER-14-00014489). The Commission’s HFDF Center traced the interfering signal to the vicinity of Irwin, Pennsylvania. In response to the email, Mr. Crow denied that he was the source of the interference and stated that “I don’t live in, nor do I operate from Irwin, PA, nor have I ever lived in, or operated from Irwin, PA.” See E-mail from Brian Crow to Laura Smith, Esq., Special Counsel, Enforcement Bureau, Federal Communications Commission (Dec. 10, 2012) (on file in EB-FIELDNER-14-00014489). Mr. Crow also declined to provide Ms. Smith with the location of his transmitter. We note that Section 1.17(a)(1) Rules prohibits a licensee from “intentionally provid[ing] material factual information that is incorrect or intentionally omit[ing] material information” in response to a Commission inquiry, whether on a formal or informal basis. 47 C.F.R. § 1.17(a)(1). While Mr. Crow denied living or operating his station in Irwin, Pennsylvania, he omitted the fact that Irwin and North Huntingdon share the same zip code and are immediately adjacent to one

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subsequently interfered with other amateur licensees following the warning demonstrates a deliberate disregard for the Commission's authority. Thus, we find that a \$3,500 upward adjustment to the proposed forfeiture is warranted. Applying the *Forfeiture Policy Statement*, Section 1.80 of the Rules, and the statutory factors to the instant case, we conclude that Mr. Crow is apparently liable for a total forfeiture in the amount of \$11,500. We caution Mr. Crow that future violations of this kind may result in significantly higher forfeitures or revocation his amateur license.

IV. ORDERING CLAUSES

10. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Act and Sections 0.111, 0.204, 0.311, 0.314, and 1.80 of the Rules, Brian Crow is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of eleven thousand five hundred dollars (\$11,500) for violations of Section 333 of the Act and Sections 97.101(d) and 97.119(a) of the Rules.¹⁷

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

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 Crow 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.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 – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.

13. 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

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another.

¹⁷ 47 U.S.C. §§ 333, 503(b); 47 C.F.R. §§ 0.111, 0.204, 0.311, 0.314, 1.80, 97.101(d), 97.119(a).

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

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, Northeast Region, Philadelphia Office, One Oxford Valley Building, Suite 404, 2300 East Lincoln Highway, Langhorne, Pennsylvania 19047, and include the NAL/Acct. No. referenced in the caption. Brian Crow also shall e-mail the written response to NER-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 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.

16. **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 Brian Crow at his address of record.

FEDERAL COMMUNICATIONS COMMISSION

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

¹⁹ See 47 C.F.R. § 1.1914.

²⁰ 47 C.F.R. §§ 1.16, 1.80(f)(3).