

Federal Communications Commission

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

| | | |
|------------------------|---|----------------------------|
| In the Matter of |) | |
| |) | |
| James J. Grinton |) | File Number EB-06-ST-184 |
| |) | |
| Amateur Licensee K7VNI |) | NAL/Acct. No. 200732980002 |
| Bellingham, Washington |) | FRN: 0016955924 |
| |) | |

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: September 25, 2007

By the District Director, Seattle Office, Western Region, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture ("NAL"), we find that James J. Grinton ("Grinton"), licensee of Amateur station K7VNI, in Bellingham, Washington apparently willfully and repeatedly violated Section 97.113(b) and Section 97.119(a) of the Commission's Rules ("Rules")¹ by transmitting one-way communications and by failing to transmit his assigned call sign in the Amateur Radio Service. We conclude, pursuant to Section 503(b) of the Communications Act of 1934, as amended ("Act"),² that Grinton is apparently liable for a forfeiture in the amount of seven thousand dollars (\$7,000).

II. BACKGROUND

2. On December 7, 2006, in response to a complaint alleging intentional interference to amateur radio communications on the 146.340/146.940 MHz repeater (Call sign VE7RPT) repeater, an agent from the Enforcement Bureau's Seattle Office, using mobile direction finding techniques, located the source of the signal to the residence of amateur radio operator K7VNI, James Grinton, in Bellingham, Washington.

3. During the period of December 9, 2006 to January 1, 2007, the Seattle agent monitored 146.340 MHz (repeater input frequency) and observed 59 transmissions of varying lengths from Grinton's residence.

4. On January 19, 2007, the Seattle Field Office issued a Warning of Interference to Communications Letter to James J. Grinton, K7VNI ("Warning Letter"). The Warning Letter informed Grinton that his station may be the source of willful or malicious interference to amateur communications and that if the "transmissions continue, you will be investigated during ongoing FCC enforcement efforts. If such an investigation indicates that you have violated the Communications Act or any FCC Rules, you could be subject to severe penalties, including, but not limited to, substantial monetary forfeitures, and criminal sanctions including imprisonment."

¹ 47 C.F.R. §§ 97.113(b), 97.119(a).

² 47 U.S.C. § 503(b).

5. On January 25, 2007, Grinton received and signed a receipt for the Warning Letter, but has not sent a response to the Seattle Office.

6. On February 27, 2007, in response to continued complaints, a Seattle agent using mobile direction finding techniques, again located the source of a signal on 146.340 MHz to Grinton's residence in Bellingham, Washington. The Seattle agent monitored and recorded 17 minutes of a continuous transmission of one-way communications of music by Grinton on 146.340 MHz.

7. On March 5, 2007, the Seattle agent, using mobile direction finding techniques, again located the source of a signal on 146.340 MHz to Grinton's residence in Bellingham, Washington. The Seattle agent monitored and recorded 15 minutes of a continuous transmission of one-way communications of music by Grinton on 146.340 MHz.

8. During the period of January 19, 2007 to June 23, 2007, the Seattle agent monitored 146.340 MHz and observed 163 transmissions by Grinton in which Grinton failed to transmit his assigned call sign (K7VNI).

III. DISCUSSION

9. 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. The term "willful" as used in Section 503(b) has been interpreted to mean simply that the acts or omissions are committed knowingly.³ The term "repeated" means the commission or omission of such act more than once or for more than one day.⁴

10. Section 97.113(b) of the Rules⁵ states that "[a]n amateur station shall not engage in any form of broadcasting, nor may an amateur station transmit one-way communications . . ." Grinton is a licensed amateur operator and on February 27, 2007, and March 5, 2007, Grinton transmitted one way communications of music of 17 and 15 minutes in length, respectively. Grinton was previously warned by the Seattle Office that any subsequent violation of the Commission's Rules could result in monetary forfeitures. Consequently, Grinton's violation was willful. The violation occurred on more than one day, therefore, it was repeated.

11. Section 97.119(a) of the Rules⁶ states that "[e]ach amateur station, except a space station or telecommand 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." Between January 19, 2007, and June 23, 2007, a Seattle agent monitored 146.340 MHz and observed 163 transmissions by Grinton in which Grinton failed to transmit his assigned call sign (K7VNI). Grinton was

³ Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'willful', when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act or any rule or regulation of the Commission authorized by this Act...." See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

⁴ 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."

⁵ 47 C.F.R. § 97.113(b).

⁶ 47 C.F.R. § 97.119(a).

previously warned by the Seattle Office that any subsequent violation of the Commission's Rules could result in monetary forfeitures. Consequently, Grinton's violation was willful. The violation occurred on more than one day, therefore, it was repeated.

12. Pursuant to *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, ("Forfeiture Policy Statement"), and Section 1.80 of the Rules, the base forfeiture amount for unauthorized emissions is \$4,000 and base forfeiture amount for failure to provide station ID is \$1,000.⁷ 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, and history of prior offenses, ability to pay, and other such matters as justice may require.⁸ Based on the criteria in Section 503(b)(2)(E) of the Act, and the upward adjustment criteria in the Forfeiture Policy Statement, we find that an upward adjustment of the base forfeiture amount of \$1,000 for failure to provide station ID is warranted.⁹ Grinton apparently failed to transmit his amateur operator call sign on over 160 transmissions in a five month period. Grinton had previously been warned by the Seattle Office concerning FCC Rule violations. Considering the entire record and applying the factors listed above, we conclude that Grinton is apparently liable for a forfeiture in the amount of \$3,000 for his failure to provide station ID, and is apparently liable for a \$4,000 forfeiture for unauthorized emissions.

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, 0.311, 0.314 and 1.80 of the Commission's Rules, James J. Grinton is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of seven thousand dollars (\$7,000) for violations of Sections 97.113(b) and 97.119(a) of the Rules.¹⁰

14. **IT IS FURTHER ORDERED** that, pursuant to Section 1.80 of the Commission's Rules within thirty days of the release date of this Notice of Apparent Liability for Forfeiture, James J. Grinton **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, payable to the order of the Federal Communications Commission. The payment must include the NAL/Acct. No. and FRN No. referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 358340, Pittsburgh, PA 15251-8340. Payment by overnight mail may be sent to Mellon Bank /LB 358340, 500 Ross Street, Room 1540670, Pittsburgh, PA 15251. Payment by wire transfer may be made to ABA Number 043000261, receiving bank Mellon Bank, and account number 911-6106.

16. The response, if any, must be mailed to Federal Communications Commission, Enforcement Bureau, Western Region, Seattle Office, 11410 NE 122nd Way, Suite 312, Kirkland, WA, 98034-6927 and must include the NAL/Acct. No. referenced in the caption.

17. 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)

⁷ 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999); 47 C.F.R. § 1.80.

⁸ 47 U.S.C. § 503(b)(2)(E).

⁹ 47 U.S.C. § 503(b)(2)(E); 47 C.F.R. § 1.80(b)(4); *see also Forfeiture Policy Statement*, 12 FCC Rcd at 17100 – 01.

¹⁰ 47 U.S.C. § 503(b), 47 C.F.R. §§ 0.111, 0.311, 0.314, 1.80, 97.113(b), 97.119(a).

Federal Communications Commission

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.

18. Requests for payment of the full amount of this Notice of Apparent Liability for Forfeiture under an installment plan should be sent to: Associate Managing Director – Financial Operations, Room 1A625, 445 12th Street, S.W., Washington, D.C. 20554.¹¹

19. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture shall be sent by Certified Mail, Return Receipt Requested, and regular mail, to James J. Grinton at his address of record.

FEDERAL COMMUNICATIONS COMMISSION

Kristine A. McGowan
District Director
Seattle Office
Western Region
Enforcement Bureau

¹¹ See 47 C.F.R. § 1.1914.