

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

In the Matter of	)	
	)	
Paul E. Holcombe	)	File No. EB-99-HU-077
	)	
Licensee of Amateur Radio Station K4TOF	)	NAL/Acct. No. X3254-002
Houston, Texas	)	
	)	
	)	
	)	

**FORFEITURE ORDER**

**Adopted: May 2, 2000**

**Released: May 3, 2000**

By the Chief, Enforcement Bureau:

**I. INTRODUCTION**

1. In this Forfeiture Order (“Order”), we issue a monetary forfeiture in the amount of eight thousand dollars (\$8,000) against Paul E. Holcombe, licensee of amateur radio station K4TOF, Houston, Texas, for willful violation of Section 333 Communications Act of 1934, as amended (“the Act”),<sup>1</sup> and Sections 97.101(d) and 97.119 of the Commission’s Rules.<sup>2</sup> The noted violations involve the operation of an amateur radio station so as to willfully or maliciously cause interference to radio communications and the transmission of unidentified amateur radio communications.

2. On January 13, 2000, the Commission’s Resident Agent Office in Houston, Texas, issued a Notice of Apparent Liability (“NAL”) for a forfeiture in the amount of eight thousand dollars (\$8,000) to Mr. Holcombe.<sup>3</sup> Mr. Holcombe filed a response on February 4, 2000.

**II. BACKGROUND**

3. Between 1993 and 1999, the Commission’s Houston Resident Agent Office received numerous complaints alleging intentional interference to users on the Memorial Emergency Repeater Association’s 145.470/144.870 MHz amateur radio repeater in Houston (“MERA repeater”). The interference was allegedly caused by stations transmitting unidentified tones, inflammatory or derogatory remarks, and unmodulated signals, none of which were identified with an FCC-assigned call sign.

<sup>1</sup> 47 U.S.C. § 333.

<sup>2</sup> 47 C.F.R. §§ 97.101(d) and 97.119.

<sup>3</sup> *Notice of Apparent Liability*, NAL Acct. No. X3254-002 (released January 13, 2000).

4. On May 25, 1999, an FCC agent from the Houston Office, using a mobile automatic direction finding (“MADF”) vehicle to monitor the MERA repeater, observed a radio signal consisting of unidentified tones and remarks being transmitted on the input frequency of the MERA repeater. The agent simultaneously monitored the output frequency of the MERA repeater and observed that this signal would transmit immediately after other stations began transmitting, resulting in interference to communications already in progress on the MERA repeater. At about 8:08 p.m., using the MADF equipment and direction-finding techniques, the agent determined that the source of the unidentified interfering transmissions was a silver Toyota bearing Texas license plate DVZ74F. This vehicle was registered to Paul E. Holcombe, licensee of amateur radio station K4TOF. Immediately thereafter, the Commission agent conducted an interview with Mr. Holcombe and inspected the vehicle. Inside the vehicle, the agent found an amateur radio transceiver which was tuned to the MERA repeater frequency pair and was capable of transmitting on the MERA repeater frequency pair. Although Mr. Holcombe admitted that he owned the vehicle and the amateur radio transceiver and that he was the licensee of amateur radio station K4TOF, he denied intentionally making any radio transmissions that day.

5. On June 2, 1999, the Houston Office issued to Mr. Holcombe an Official Notice of Violation (“NOV”) for willful and malicious interference to radio communications in violation of Section 333 of the Act and Section 97.101(c)<sup>4</sup> of the Rules and for transmitting unidentified amateur radio communications in violation of Section 97.119 of the Rules. In his June 4, 1999, response to the NOV, Mr. Holcombe stated that his amateur radio station may have been inadvertently activated on May 25, 1999, but he denied any intent to interfere with other stations. Mr. Holcombe also stated that he suffered from a nerve disorder in his hands which makes it difficult for him to manipulate the controls of the amateur radio transceiver in his vehicle.

6. On January 13, 2000, the Houston Office issued the subject NAL, citing Mr. Holcombe for willful violations of Section 333 of the Act and Sections 97.101(d) and 97.119 of the Rules. In his February 4, 2000, response to the NAL, Mr. Holcombe denies that the violations occurred. Mr. Holcombe asserts that there was a passenger in his car on May 25, 1999, Dennis Rogers, who is willing to testify that the alleged violations did not occur. Mr. Holcombe states that Mr. Rogers told the FCC agent at the time that the alleged violations did not take place, but the agent discounted his statement. In addition, Mr. Holcombe asserts that the NAL unfairly holds him responsible for violations dating back to 1993. Mr. Holcombe maintains that he is being charged for any and all violations occurring during the period from 1993 to 1999 as a “convenient target.” Finally, Mr. Holcombe argues that he has been denied a fair hearing of the facts and the right to due process.

### III. DISCUSSION

7. As the NAL explicitly states, the forfeiture amount in this case was assessed in accordance with Section 503 of the Act,<sup>5</sup> Section 1.80 of the Rules,<sup>6</sup> and *The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999) (“*Policy Statement*”). In examining

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<sup>4</sup> The NOV erroneously cited Section 97.101(c) of the Rules instead of Section 97.101(d), but accurately stated the language of Section 97.101(d). The NAL correctly cited Section 97.101(d).

<sup>5</sup> 47 U.S.C. § 503(b).

<sup>6</sup> 47 C.F.R. § 1.80.

Mr. Holcombe's response, Section 503(b) 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.<sup>7</sup>

8. Section 333 of the Act and Section 97.101(d) of the Rules both prohibit willful or malicious interference to radio communications. Section 97.119 of the Rules prohibits the transmission of unidentified amateur radio communications. While Mr. Holcombe generally denies that any violations of these provisions occurred, his denial is contradicted by the observations of the FCC agent. On May 25, 1999, using MADF equipment, the investigating FCC agent observed a radio signal consisting of unidentified tones and remarks which would transmit on the MERA repeater input frequency immediately after another station began transmitting, resulting in harmful interference to communications already in progress on the MERA repeater. The agent positively identified the source of the interfering transmissions to be Mr. Holcombe's vehicle. On inspection of Mr. Holcombe's vehicle, the agent found an amateur radio transceiver which was capable of transmitting on the MERA repeater frequency pair and was in fact tuned to the MERA repeater frequency pair. We conclude that this evidence is sufficient to establish that Mr. Holcombe willfully and maliciously interfered with radio communications in willful violation of Section 333 of the Act and Section 97.101(d) of the Rules. As stated in the NAL, the interference was both willful and malicious because Mr. Holcombe timed his transmissions to commence just after other stations had begun transmitting. Mr. Holcombe also willfully violated Section 97.119 of the Rules because he failed to transmit the required FCC identification during the transmissions.

9. While Mr. Holcombe asserts that there was a passenger in his car on May 25, 1999, Dennis Rogers, who is willing to testify that the alleged violations did not occur, Mr. Holcombe failed to provide a sworn statement or statement under penalty of perjury from Mr. Rogers. Even so, the credibility of such a statement would be questionable in the face of the substantial evidence that the violations occurred. Furthermore, while Mr. Holcombe claims that Mr. Rogers told the FCC agent at the time that the alleged violations did not take place, the agent's contemporaneous written notes of his May 25, 1999, interview with Mr. Holcombe and Mr. Rogers do not reflect that Mr. Rogers made any such statement.<sup>8</sup> Thus, there is no evidence in the record to support Mr. Holcombe's claim that the violations did not occur.

10. Moreover, contrary to Mr. Holcombe's assertions, he is not being held responsible for violations dating back to 1993. The reference in the NAL to prior interference complaints was background information intended to show the basis for the investigation that led to issuance of the NAL. The NAL only cited Mr. Holcombe for the violations personally observed and documented by the FCC agent.

11. Finally, we reject Mr. Holcombe's argument that he has been denied a fair hearing of the facts and the right to due process. Mr. Holcombe is not entitled to a hearing as a matter of right because Section 503(b)(3)(A) of the Act, 47 U.S.C. § 503(b)(3)(A), explicitly states that such hearings may be held

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<sup>7</sup> 47 U.S.C. § 503(b)(2)(D).

<sup>8</sup> The agent's written notes of his May 25, 1999, interview with Mr. Holcombe and Mr. Rogers indicate that the following exchange occurred. The agent asked Mr. Holcombe if he was responsible for the interfering transmissions the agent had just observed emanating from his vehicle, and Mr. Holcombe responded that he did not recall operating at that time. The agent then asked Mr. Rogers if he had been operating the radio at that time. In response, Mr. Rogers denied operating the radio, and Mr. Holcombe also stated that Mr. Rogers had not been operating the radio.

“[a]t the discretion of the Commission.” (emphasis added). In lieu of holding a hearing, the Commission may proceed as it did in the instant case, using the NAL procedures set forth in Section 503(b)(4) of the Act, 47 U.S.C. § 503(b)(4). *See also* 47 C.F.R. § 1.80(e). These procedures do not deprive Mr. Holcombe of his right to due process because any forfeiture issued in accordance with these procedures is ultimately subject to a trial *de novo* in federal district court pursuant to Section 504(a) of the Act, 47 U.S.C. § 504(a), should Mr. Holcombe not pay prior to such time.

12. We have examined Mr. Holcombe’s response to the NAL pursuant to the statutory factors above, and in conjunction with the *Policy Statement*. As a result of our review, we conclude that Mr. Holcombe has failed to justify cancellation or reduction of the proposed forfeiture. Therefore, we affirm the forfeiture of eight thousand dollars (\$8,000).

#### IV. ORDERING CLAUSES

13. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Act,<sup>9</sup> and Sections 0.111, 0.311 and 1.80(f)(4) of the Commission’s Rules,<sup>10</sup> Paul E. Holcombe, IS LIABLE FOR A MONETARY FORFEITURE in the amount of eight thousand dollars (\$8,000) for willful and malicious interference to radio communications in violation of Section 333 of the Act and Section 97.101(d) of the Rules and for transmitting unidentified amateur radio communications in violation of Section 97.119 of the Rules.

14. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Commission’s Rules<sup>11</sup> within 30 days of the release of this Order. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to section 504(a) of the Act.<sup>12</sup> Payment may be made by credit card through the Commission’s Credit and Debt Management Center at (202) 418-1995 or by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note the NAL/Acct. No. X3254-002. Requests for full payment under an installment plan should be sent to: Chief, Credit and Debt Management Center, 445 12th Street, S.W., Washington, D.C. 20554.<sup>13</sup>

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<sup>9</sup> 47 U.S.C. § 503(b).

<sup>10</sup> 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4).

<sup>11</sup> 47 C.F.R. § 1.80.

<sup>12</sup> 47 U.S.C. § 504(a).

<sup>13</sup> *See* 47 C.F.R. § 1.1914.

15. IT IS FURTHER ORDERED that a copy of this Forfeiture Order shall be sent by Certified Mail Return Receipt Requested to Paul E. Holcombe at 15103 Mira Vista Drive, Houston, Texas 77083-4208.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon  
Chief, Enforcement Bureau