

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

In the Matter of	)	
	)	
Robert L. Meyers	)	File No. EB-99-HU-039
	)	
Licensee of Amateur Radio Station N5WLY	)	NAL/Acct. No. X3254-001
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) to Robert L. Meyers, licensee of amateur radio station N5WLY, Houston, Texas, for willful violation of Section 333 of the Communications Act of 1934, as amended (“the Act”),<sup>1</sup> and Sections 97.101(d) and 97.119 of the Commission’s Rules (“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. Meyers.<sup>3</sup> Mr. Meyers 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 February 24, 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 derogatory 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 6:45 a.m., using the MADF equipment and direction-finding techniques, the agent determined that the source of the unidentified interfering transmissions was a red Jeep Cherokee bearing Texas license plate C39CYK. This vehicle was registered to Robert L. Meyers, licensee of amateur radio station N5WLY.

5. On June 1, 1999, two agents from the Houston Office visited Mr. Meyers and conducted an inspection of his red Jeep Cherokee. Mr. Meyers admitted that he owned the vehicle and that he was the licensee of amateur radio station N5WLY. Although the agents found a whip antenna similar to the type used for transmissions in the 144 MHz frequency range sitting on the floor of the vehicle's rear cargo area, the antenna was not connected to any other equipment and the agents found no radio transmitting equipment in the vehicle at that time. The agents issued to Mr. Meyers 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.

6. On June 8, 1999, the Houston Office received Mr. Meyers' response to the NOV. In his response, Mr. Meyers denied the violations and asserted that his radio equipment had been located at his residence, not in his Jeep Cherokee, during the entire year of 1999. Mr. Meyers also stated that he would take precautionary steps to ensure that no accidental transmissions would occur from his station.

7. On January 13, 2000, the Houston Office issued the subject NAL, citing Mr. Meyers 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. Meyers states that the NAL included only one of the five violation dates listed in the NOV -- namely, the February 24, 1999, violations -- and failed to state where his Jeep Cherokee was supposed to have been at the time of the alleged violations on that date. In addition, Mr. Meyers asserts that he never had a radio transmitter in his Jeep Cherokee and that he did not use the frequencies 144.870 MHz and 145.470 MHz during the entire year of 1999. He further asserts that he could provide statements from numerous persons attesting that there was never a radio transmitter in his vehicle. Mr. Meyers also questions why it took until June 1, 1999, to perform an inspection of his Jeep Cherokee if his vehicle was identified as the source of the interfering transmissions on February 24, 1999. Mr. Meyers claims that if an immediate inspection of his Jeep Cherokee had taken place, it would have verified that he had no radio transmitter in the vehicle on that date. Finally, Mr. Meyers contends that the reference in the NAL to the interference complaints received by the Houston Office between 1993 and 1999 unfairly suggests that he is responsible for those violations and was intended to prejudice the Commission.

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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).

### III. DISCUSSION

8. 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 Mr. Meyers' 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>

9. Mr. Meyers' suggestion that the NAL is flawed because it included only one of the violation dates listed in the NOV and did not specify the location of the Jeep Cherokee at the time of the February 24, 1999, violations is without merit. Four of the five violation dates listed in the NOV were based on observations of and evidence provided by Commission informants. The NAL only cited Mr. Meyers for the violations that occurred on February 24, 1999, which were personally observed and documented by the FCC agent. Furthermore, it is immaterial that the NAL did not specify the location of Mr. Meyers' Jeep Cherokee at the time of the February 24, 1999, violations. Nevertheless, we note that the case file indicates that Mr. Meyers' Jeep Cherokee was parked outside of his place of business at 8825 Salon Road in Houston, Texas, at the time the FCC agent observed the violations.

10. Mr. Meyers' assertions that he never had a radio transmitter in his Jeep Cherokee and did not use the MERA repeater frequencies during 1999 are contradicted by the observations of the FCC agent. On February 24, 1999, the FCC agent followed Mr. Meyers' Jeep Cherokee from a location near Mr. Meyers' residence to his place of business at 8825 Salon Road. Immediately after Mr. Meyers' Jeep came to a stop and parked in front of 8825 Salon Road, the agent observed radio transmissions consisting of derogatory remarks being transmitted on the input frequency of the MERA repeater, resulting in interference to communications already in progress on the MERA repeater. While monitoring these transmissions, the agent observed that no FCC identification was transmitted by the interfering station. Using the MADF vehicle, the agent completely circled Mr. Meyers' Jeep and positively determined that the interfering transmissions emanated from that vehicle. At that time, no other vehicles or persons were located near the Jeep. The agent also observed Mr. Meyers lower his head at the start of each interfering transmission, and then raise it back up at the end of each such transmission. Immediately after the interfering transmissions ceased, the agent observed Mr. Meyers exit the Jeep Cherokee and enter the business at 8825 Salon Road. The agent then drove by the Jeep Cherokee and observed a whip antenna similar to the type used for transmissions in the 144 MHz frequency range in the rear cargo area of the vehicle. We find that this evidence is sufficient to establish that Mr. Meyers 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. Meyers timed his transmissions to commence just after other stations had begun transmitting. Mr. Meyers also willfully violated Section 97.119 of the Rules because he failed to transmit the required FCC identification during the transmissions.

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<sup>5</sup> 47 U.S.C. § 503(b).

<sup>6</sup> 47 C.F.R. § 1.80.

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

11. While Mr. Meyers asserts that he could provide statements from numerous unidentified persons attesting that he has never had a radio transmitter in his Jeep Cherokee, he did not provide a sworn statement or statement under penalty of perjury from any such person. Such statements would be of doubtful credibility in light of the incontrovertible evidence that the transmissions were emanating from the Jeep Cherokee. Thus, there is no evidence in the record to support Mr. Meyers' claim that he has never had a radio transmitter in his vehicle.

12. Mr. Meyers also questions why it took until June 1, 1999, to perform an inspection of his Jeep Cherokee if his vehicle was identified as the source of the interfering transmissions on February 24, 1999. This three-month time lapse was based on allegations in the complaints and the FCC agent's own observations during the initial stages of his investigation that Mr. Meyers often acted in concert with at least one other unidentified amateur radio operator. The agent determined that it would be best to delay official contact with Mr. Meyers so as not to provide Mr. Meyers the opportunity to notify the other operator before he could be identified. The other interfering operator was identified on May 25, 1999.<sup>8</sup> It is immaterial that no radio transmitting equipment was found in Mr. Meyers' Jeep Cherokee when it was inspected on June 1, 1999. As discussed above, the evidence in the record is sufficient to establish that the violations occurred.

13. Finally, we find no merit in Mr. Meyers' contention that the reference in the NAL to the prior interference complaints unfairly suggests that he is responsible for those violations and was intended to prejudice the Commission. The reference in the NAL to the prior interference complaints was background information intended to show the basis for the investigation that led to issuance of the NAL. As noted above, the NAL only cited Mr. Meyers for the violations personally observed and documented by the FCC agent.

14. We have examined Mr. Meyers' 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. Meyers 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

15. 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> Robert L. Meyers, 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.

16. 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

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<sup>8</sup> See *Paul E. Holcombe*, DA 00-970 (released May 3, 2000).

<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.

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>

17. IT IS FURTHER ORDERED that a copy of this Forfeiture Order shall be sent by Certified Mail Return Receipt Requested to Robert L. Meyers at 7358 Crownwest Drive, Houston, Texas 77072, and to his counsel, Thomas E. Edmondson, Esq., at 7322 Southwest Freeway, Suite 525, Houston, Texas 77074.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon  
Chief, Enforcement Bureau

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<sup>12</sup> 47 U.S.C. § 504(a).

<sup>13</sup> See 47 C.F.R. § 1.1914.