

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

In the Matter of	)	
	)	
Raimundo P. Silva	)	File Number EB-04-SF-150
	)	
Former Licensee of Amateur Station KD6SXG	)	NAL/Acct. No. 200532960001
Brentwood, California	)	FRN 0009808163
	)	

**FORFEITURE ORDER**

**Adopted: July 25, 2005**

**Released: July 27, 2005**

By the Regional Director, Western Region, Enforcement Bureau:

**I. INTRODUCTION**

1. In this *Forfeiture Order* (“*Order*”), we issue a monetary forfeiture in the amount of five hundred dollars (\$500) to Raimundo P. Silva (“*Silva*”), former licensee of Amateur Station KD6SXG, for willful and repeated violations of Section 301 of the Communications Act of 1934, as amended (“*Act*”).<sup>1</sup> The noted violations involve unauthorized operation by *Silva* on a frequency reserved for federal government use only.

**II. BACKGROUND**

2. On April 12, 2004, the Commission’s San Francisco Field Office received a complaint that an authorized United States government user was receiving harmful interference from an unauthorized station that obstructed and interfered with satellite communications. On April 19, 2004, San Francisco Office field agents, using electronic direction finding techniques, detected unauthorized civilian terrestrial transmissions on the reserved federal government frequency. The agents took bearings of the radio signal which indicated the source of the signal to be a station in the vicinity of *Silva*’s residence in Brentwood, California. Between April and October, 2004, the San Francisco agents detected, traced and documented numerous instances of both stationary and mobile unauthorized radio operations by *Silva*.

3. According to Commission records, *Silva* was issued a General Class, amateur radio operator license with call sign KD6SXG, on February 23, 1993.<sup>2</sup> The license was renewed on October 31, 2003, and will expire on October 31, 2013. Pursuant to Section 97.103(a) of the Rules, licensed

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<sup>1</sup>47 U.S.C. § 301.

<sup>2</sup>In accordance with Part 97 of the Commission’s Rules, operation of an amateur station requires an amateur operator license grant from the FCC. Before receiving a license grant, an applicant must pass an examination which contains one telegraphy (Morse code) element and three written elements which establish the applicant’s level of operational and technical ability in performing properly the duties of an amateur service licensee. The class for which each examinee is qualified is determined by the degree of skill and knowledge in operating a station that the examinee demonstrates at the examination. There are six classes of amateur operator licenses. The higher the license class, the more expertise the licensee must demonstrate and the greater the frequency privileges the amateur operator is authorized. In ascending order, the classes of amateur operator license grants are: Novice, Technician, Technician Plus, General, Advanced and Amateur Extra. *See 1998 Biennial Regulatory Review – Amendment of Part 97 of the Commission’s Amateur Service Rules*, 13 FCC Rcd 15798 (1998).

amateur radio operators are responsible for the proper operation of their stations in accordance with the Commission's Rules.<sup>3</sup> Licensed amateur operators are authorized to operate on the frequencies listed Section 97.301 of the Rules, as designated by their operator class and license.<sup>4</sup> In order to use designated frequencies in the amateur bands, amateur operators must follow the frequency sharing requirements in Section 97.301 of the Rules and the United States Table of Frequency Allocations ("Table"), found in Sections 2.105 and 2.106<sup>5</sup> of the Rules.<sup>6</sup> The Table lists the use of the frequency band 267 – 322 MHz as Federal Government only.<sup>7</sup> A review of Commission records reveals no record of a license for the use of any frequency within this band issued to Silva.

4. On October 26, 2004, the San Francisco Office issued a *Notice of Apparent Liability for Forfeiture* ("NAL") in the amount of \$20,000 to Silva.<sup>8</sup> Also on October 26, 2004, agents inspected Silva's radio equipment. Silva admitted operating radio equipment in the frequency band reserved for federal government use without a license, but asserted he was unaware that his unauthorized radio transmissions interfered with the federal government users' authorized operations. Silva subsequently voluntarily relinquished all of his radio equipment for both the mobile and fixed systems and surrendered his amateur license. After receiving an extension of time, Silva filed a response to the NAL on December 10, 2004 ("Response"). In his Response, Silva does not contest the finding that he violated Section 301 of the Act. Instead, he asks that the proposed forfeiture be cancelled or reduced on the grounds that when notified of the violation, Silva voluntarily relinquished his operating equipment to the San Francisco agents and then surrendered his amateur license to the Commission. He also argues that he is unable to pay the proposed forfeiture and, to support this claim, supplies three years of tax records.

### III. DISCUSSION

5. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Act,<sup>9</sup> Section 1.80 of the Rules,<sup>10</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) ("*Forfeiture Policy Statement*"). In examining Silva'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>11</sup>

6. Section 301 of the Act requires that no person shall use or operate any apparatus for the transmission of energy or communications or signal by radio except under and in accordance with this Act and with a license granted under the provisions of this Act.<sup>12</sup> Silva does not contest the instant

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<sup>3</sup>47 C.F.R. § 97.103(a).

<sup>4</sup>47 C.F.R. § 97.301.

<sup>5</sup>47 C.F.R. §§ 2.105, 2.106.

<sup>6</sup>See 47 C.F.R. § 97.303.

<sup>7</sup>47 C.F.R. § 2.106.

<sup>8</sup>*Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200532960001 (Enf. Bur., Western Region, San Francisco Office, released October 26, 2004).

<sup>9</sup>47 U.S.C. § 503(b).

<sup>10</sup>47 C.F.R. § 1.80.

<sup>11</sup>47 U.S.C. § 503(b)(2)(D).

<sup>12</sup>47 U.S.C. § 301.

violation. Instead he asks that the proposed forfeiture amount be reduced or cancelled because he voluntarily surrendered his operating equipment and his amateur license to the Commission. He also supplies three years of tax records to support his claim that he is unable to pay the proposed forfeiture amount. Having reviewed Silva's response along with the supporting financial documentation we conclude, consistent with precedent, that a reduction of the proposed forfeiture to \$500 is appropriate.<sup>13</sup>

7. We have examined Silva's response to the *NAL* pursuant to the statutory factors above, and in conjunction with the *Forfeiture Policy Statement*. As a result of our review, we conclude that Silva willfully and repeatedly violated Section 301 of the Act. Considering the entire record and the factors listed above, we find that reduction of the proposed forfeiture is warranted, given Silva's voluntary surrender of his operating equipment and his amateur license, and his ability to pay. Accordingly, the forfeiture amount is reduced from twenty thousand dollars (\$20,000) to five hundred dollars (\$500).

#### IV. ORDERING CLAUSES

8. **ACCORDINGLY, IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended ("Act"), and Sections 0.111, 0.311 and 1.80(f)(4) of the Commission's Rules, Raimundo P. Silva **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of \$500 for willfully and repeatedly violating Section 301 of the Act.<sup>14</sup>

9. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules 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>15</sup> 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. Requests for full payment under an installment plan should be sent to: Chief, Revenue and Receivables Group, 445 12th Street, S.W., Washington, D.C. 20554.<sup>16</sup>

10. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by First Class Mail and Certified Mail Return Receipt Requested to Raimundo P. Silva at his address of record.

#### FEDERAL COMMUNICATIONS COMMISSION

Rebecca L. Dorch  
Regional Director, Western Region  
Enforcement Bureau

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<sup>13</sup>See, e.g., *Ronald E. Sauer*, 19 FCC Rcd 14884 (EB 2004); *Kornwell Chan*, 16 FCC Rcd 14893 (EB 2001).

<sup>14</sup>47 U.S.C. §§ 301, 503(b), 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4).

<sup>15</sup>47 U.S.C. § 504(a).

<sup>16</sup>See 47 C.F.R. § 1.1914.