

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

In the Matter of	)	
	)	
Estevan J. Gutierrez	)	File No.: EB-11-SD-0024
	)	
Las Vegas, New Mexico	)	NAL/Acct. No.: 201132940006
	)	
	)	FRN: 0021017025

**NOTICE OF APPARENT LIABILITY FOR FORFEITURE**

**Adopted: August 30, 2011****Released: September 1, 2011**

By the District Director, San Diego District Office, Western Region, Enforcement Bureau:

**I. INTRODUCTION**

1. In this Notice of Apparent Liability for Forfeiture (“NAL”), we find that Estevan J. Gutierrez (“Gutierrez”), apparently willfully and repeatedly violated (1) section 301 of the Communications Act of 1934, as amended (“Act”),<sup>1</sup> by operating on a frequency licensed to the Las Vegas, New Mexico, Police Department (“LVPD”) without authorization, and (2) section 333 of the Act by willfully and maliciously interfering with the LVPD’s licensed operations on that frequency. We conclude that Gutierrez is apparently liable for a forfeiture in the amount of twenty-five thousand dollars (\$25,000).

**II. BACKGROUND**

2. On February 15, 2011, in response to a complaint from the LVPD of radio interference to their main dispatch channel of 159.150 MHz<sup>2</sup> from an unknown male who was threatening LVPD officers, an agent from the Enforcement Bureau’s San Diego Office (“San Diego Office”) arrived in Las Vegas, New Mexico, with an FCC mobile direction-finding vehicle (“MDF”) to investigate, locate, and assist in resolving the interference. The LVPD Deputy Chief informed the agent that the subject’s use of the frequency included obscenities and threats against police officers and their families, and that it required the LVPD to use a backup channel for their dispatch operations.<sup>3</sup> A LVPD sergeant identified the voice as that of Gutierrez, who was known to the sergeant from prior incidents in the City of Las Vegas. The LVPD sergeant then informed the San Diego agent that he believed that the individual interfering with the LVPD dispatch channel was Gutierrez. According to the LVPD, Gutierrez did not have a known current address. That evening the subject transmitted on 159.150 MHz making threats to LVPD officers. The San Diego agent, while accompanied by LVPD officers used radio direction-finding techniques to find the location of

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<sup>1</sup> 47 U.S.C. §§ 301, 333.

<sup>2</sup> The City of Las Vegas, New Mexico, is the licensee of Station WPVX804, with authorization to operate on 159.150 MHz in and around Las Vegas, New Mexico.

<sup>3</sup> The LVPD Deputy Chief also informed the San Diego agent that during the previous three days, the subject made over 400 transmissions on 159.150 MHz, and that the subject also gave false information to the fire department while operating on 159.150 MHz.

the transmissions from the subject on 159.150 MHz and determined that Gutierrez was mobile and was not transmitting from a fixed location.

3. On February 16, 2011, Gutierrez began transmitting again and the agent used direction-finding techniques to follow the subject's various transmissions around the City of Las Vegas. Ultimately, the agent observed the highest signal strength from the subject's transmissions on 159.150 MHz on University Avenue near 7<sup>th</sup> Street. The agent drove the MDF vehicle around the block into an alley running parallel to University Avenue. As the agent drove through the alley he observed the strongest signal strength of the subject's transmission next to a duplex unit. The agent determined from the signal strength that the subject was transmitting from inside the duplex. The San Diego agent informed the LVPD sergeant that the subject and transmitter were in the duplex. The LVPD sergeant along with several other LVPD officers, observed Gutierrez inside the duplex holding a handheld radio and shortly thereafter apprehended Gutierrez within the duplex and also located the handheld radio Gutierrez had been holding. The San Diego agent and the LVPD sergeant identified the handheld radio as an Icom model IC-F50, tuned to 159.150 MHz, the frequency licensed to the City of Las Vegas that was receiving the interference.

### 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. 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."<sup>4</sup> The legislative history to section 312(f)(1) of the Act clarifies that this definition of willful applies to both section 312 and 503(b) of the Act<sup>5</sup> and the Commission has so interpreted the term in the section 503(b) context.<sup>6</sup> The Commission may also assess a forfeiture for violations that are merely repeated, and not willful.<sup>7</sup> The term "repeated" means the commission or omission of such act more than once or for more than one day.<sup>8</sup>

5. Section 301 of the Act states that no person shall use or operate any apparatus for the transmission of energy or communications or signals by radio within the United States except under and in accordance with the Act and with a license granted under the provisions of the Act.<sup>9</sup> A review of Commission databases revealed that Gutierrez has no authorization to operate on 159.150 in the Las Vegas,

<sup>4</sup> 47 U.S.C. § 312(f)(1).

<sup>5</sup> H.R. Rep. No. 97-765, 97<sup>th</sup> 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 [A]ct (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. 'Repeated' means more than once, or where the act is continuous, for more than one day. Whether an act is considered to be 'continuous' would depend upon the circumstances in each case. 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 ...").

<sup>6</sup> See, e.g., *Application for Review of Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991), *recon. denied*, 7 FCC Rcd 3454 (1992) ("*Southern California Broadcasting Co.*").

<sup>7</sup> See, e.g., *Callais Cablevision, Inc.*, Notice of Apparent Liability for Monetary Forfeiture, 16 FCC Rcd 1359, 1362 ¶ 10 (2001) ("*Callais Cablevision, Inc.*") (proposing a forfeiture for, *inter alia*, a cable television operator's repeated signal leakage).

<sup>8</sup> 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."

<sup>9</sup> 47 U.S.C. § 301.

New Mexico, area. As discussed above, on February 15, 2011 and February 16, 2011, Gutierrez operated a radio station on frequency 159.150 MHz without a license. Based on the evidence before us, we find that Gutierrez apparently willfully and repeatedly violated section 301 of the Act by operating radio transmission equipment without Commission authorization on the frequency 159.150 MHz on February 15, 2011, and February 16, 2011.

6. Section 333 of the Act states that no person shall willfully or maliciously interfere with or cause interference to any radio communications of any station licensed under this Act.<sup>10</sup> The legislative history for section 333 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.”<sup>11</sup> Gutierrez’s transmissions on February 15, 2011 and February 16, 2011, interfered with the licensed transmissions of the City of Las Vegas Police Department, contained threats against the officers in that police department and their families, and required the LVPD to use a backup dispatch channel rather than its licensed main dispatch channel on 159.150 MHz. Based on the evidence before us, we find that Gutierrez apparently willfully and repeatedly violated section 333 of the Act by willfully and maliciously interfering with the LVPD’s licensed operations, on February 15, 2011, and February 16, 2011.

7. Pursuant to the Commission’s *Forfeiture Policy Statement* and section 1.80 of the Rules, the base forfeiture amount for operation without an instrument of authorization is \$10,000, and the base forfeiture amount for interference is \$7,000.<sup>12</sup> 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, any history of prior offenses, ability to pay, and other such matters as justice may require.<sup>13</sup> We find Gutierrez’s misconduct particularly egregious because his unlicensed operation included willful and malicious interference to the LVPD’s operations on 159.150 MHz, which included threats against the officers and their families, and required the LVPD to operate on a backup channel. Thus, we find that an upward adjustment of \$8,000 to the combined base forfeiture of \$17,000 is warranted.<sup>14</sup> Applying the *Forfeiture Policy Statement*, section 1.80 of the Rules, and the statutory factors to the instant case, we conclude that Gutierrez is apparently liable for a \$25,000 forfeiture.

#### IV. ORDERING CLAUSES

8. Accordingly, **IT IS ORDERED** that, pursuant to section 503(b) of the Communications Act of 1934, as amended, and sections 0.111, 0.204(b), 0.311, 0.314, and 1.80 of the Rules, Estevan J. Gutierrez is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of twenty-five thousand dollars (\$25,000) for violation of sections 301 and 333 of the Act.<sup>15</sup>

9. **IT IS FURTHER ORDERED** that, pursuant to section 1.80 of the Rules within thirty days of the release date of this Notice of Apparent Liability for Forfeiture, Estevan J. Gutierrez **SHALL**

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<sup>10</sup> 47 U.S.C. § 333.

<sup>11</sup> H.R. Rep. No. 101-316, at 13 (1989).

<sup>12</sup> *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*”), *recon. denied*, 15 FCC Rcd 303 (1999); 47 C.F.R. § 1.80.

<sup>13</sup> 47 U.S.C. § 503(b)(2)(E).

<sup>14</sup> See 47 C.F.R. § 1.80(b)(4). See also *Gabriel A. Garcia*, Notice of Apparent Liability for Forfeiture, 26 FCC Rcd 3750 (Enf. Bur. 2011) (upward adjustment warranted for unlicensed operation which resulted in interference to public safety radio operations).

<sup>15</sup> 47 U.S.C. §§ 301, 333, 503(b); 47 C.F.R. §§ 0.111, 0.204(b), 0.311, 0.314, 1.80.

**PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

10. Payment of the forfeiture must be made by credit card, check, or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Account Number and FRN referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank TREAS/NYC, and account number 27000001. For payment by credit card, an FCC Form 159 (Remittance Advice) must be submitted. When completing the FCC Form 159, enter the NAL/Account number in block number 23A (call sign/other ID), and enter the letters “FORF” in block number 24A (payment type code). Requests for full payment under an installment plan should be sent to: Chief Financial Officer -- Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554.<sup>16</sup> If you have questions regarding payment procedures, please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: [ARINQUIRIES@fcc.gov](mailto:ARINQUIRIES@fcc.gov). Estevan J. Gutierrez shall send electronic notification on the date said payment is made to [WR-Response@fcc.gov](mailto:WR-Response@fcc.gov).

11. 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 1.80(f)(3) and 1.16 of the Rules.<sup>17</sup> The written statement must be mailed to Federal Communications Commission, Enforcement Bureau, Western Region, San Diego Office, 4542 Ruffner Street, Suite 370, San Diego, CA 92111 and include the NAL/Acct. No. referenced in the caption. Estevan J. Gutierrez shall also email the written response to [WR-Response@fcc.gov](mailto:WR-Response@fcc.gov).

12. 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) 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.

13. **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 regular mail, to Estevan J. Gutierrez.

FEDERAL COMMUNICATIONS COMMISSION

James T. Lyon  
District Director  
San Diego District Office  
Western Region  
Enforcement Bureau

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<sup>16</sup> See 47 C.F.R. § 1.1914.

<sup>17</sup> 47 C.F.R. §§ 1.80(f)(3), 1.16.