

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

In the Matter of	)	
	)	File No.: EB-11-OR-0015
John Hays	)	
	)	NAL/Acct. No.: 201132620002
Bourg, LA	)	
	)	FRN: 0020918033
	)	

**FORFEITURE ORDER**

**Adopted:** September 20, 2011

**Released:** September 20, 2011

By the Regional Director, South Central Region, Enforcement Bureau:

**I. INTRODUCTION**

1. In this Forfeiture Order (“*Order*”), we issue a monetary forfeiture in the amount of four hundred-fifty dollars (\$450) to John Hays (“Mr. Hays”) for willful violation of section 301 of the Communications Act of 1934, as amended (“*Act*”)<sup>1</sup> and sections 95.410 and 95.411 of the Commission’s rules (“*Rules*”).<sup>2</sup> The noted violations involved Mr. Hays’s operation of a radio transmitter without the requisite Commission authorization.

**II. BACKGROUND**

2. On June 7, 2011, the Enforcement Bureau’s New Orleans Office (“New Orleans Office”) issued a Notice of Apparent Liability for Forfeiture (“*NAL*”)<sup>3</sup> to Mr. Hays for operating his Citizens Band (“CB”) transmitter without the requisite Commission authorization. As discussed in detail in the *NAL*,<sup>4</sup> agents from the New Orleans Office determined that Mr. Hays, despite verbal and written warnings issued by the agents, continued unlicensed and overpower operation of a CB transmitter attached to a linear amplifier from his residence in Bourg, Louisiana.<sup>5</sup> In view of the record evidence, including the fact that Mr. Hays operated his CB transmitter in a manner that voided his authorization after notice that such activity violated the Act and the Commission’s rules (“*Rules*”), the *NAL* proposed a forfeiture of \$15,000 against Mr. Hays for violation of section 301 of the Act and sections 95.410 and 95.411 of the Rules. Mr. Hays submitted a response to the *NAL* acknowledging that this was a “very serious matter; [he has] not taken it lightly” and stating that he had “made the changes [he] had to.”<sup>6</sup> Mr. Hays requests cancellation

<sup>1</sup> 47 U.S.C. § 301.

<sup>2</sup> 47 C.F.R. §§ 95.410, 95.411.

<sup>3</sup> *John Hays*, Notice of Apparent Liability for Forfeiture, 25 FCC Rcd 7919 (Enf. Bur. 2011).

<sup>4</sup> A comprehensive recitation of the facts and history of this case can be found in the *NAL* and is incorporated herein by reference.

<sup>5</sup> *NAL* at 7919-7920.

<sup>6</sup> Letter from John Hays, to the New Orleans Office dated June 8, 2011 (“*NAL Response*”).

or reduction of the proposed forfeiture, however, because he lives solely on social security benefits and asserts that, as a result, he cannot afford to pay the proposed forfeiture.<sup>7</sup>

### III. DISCUSSION

3. The proposed forfeiture amount in this case was assessed in accordance with section 503(b) of the Act,<sup>8</sup> section 1.80 of the Rules,<sup>9</sup> and the *Forfeiture Policy Statement*.<sup>10</sup> In examining Mr. Hays'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> As discussed below, we have considered Mr. Hays's response in light of these statutory factors and we find that a reduction in the forfeiture is warranted based solely on his documented inability to pay.

4. As set forth in the *NAL*, agents from the New Orleans Office determined Mr. Hays operated a CB transmitter with an attached amplifier with excessive power on February 10, 2011. In his response to the *NAL*, Mr. Hays does not deny any of the facts set forth in the *NAL*.<sup>12</sup> Therefore, we find that Mr. Hays willfully violated section 301 of the Act and sections 95.410 and 95.411 of the Rules by operating an unlicensed radio transmitter. With regard to an individual's or entity's inability to pay a claim, the Commission has determined that, in general, gross revenues are the best indicator of an ability to pay a forfeiture.<sup>13</sup> Having reviewed Mr. Hays's submitted documentation, we conclude that the forfeiture should be reduced to \$450, an amount within the range determined by the Bureau to be affordable.

### IV. ORDERING CLAUSES

5. Accordingly, **IT IS ORDERED** that, pursuant to section 503(b) of the Communications Act of 1934, as amended, and sections 0.111, 0.204, 0.311, 0.314, and 1.80(f)(4) of the Commission's rules, John Hays **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of four hundred fifty dollars (\$450) for violations of section 301 of the Communications Act of 1934, as amended, and sections 95.410 and 95.411 of the Commission's rules.<sup>14</sup>

6. 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 enforcement 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

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<sup>7</sup> *Id.*

<sup>8</sup> 47 U.S.C. § 503(b).

<sup>9</sup> 47 C.F.R. § 1.80.

<sup>10</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), *recon. denied*, 15 FCC Rcd 303 (1999) ("*Forfeiture Policy Statement*").

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

<sup>12</sup> *See NAL Response* at 1.

<sup>13</sup> *See PJB Communications of Virginia, Inc.*, Forfeiture Order, 7 FCC Rcd 2088, 2089 (1992) (forfeiture not deemed excessive where it represented approximately 2.02 percent of the violator's gross revenues); *Local Long Distance, Inc.*, Forfeiture Order, 16 FCC Rcd 24385 (2000) (forfeiture not deemed excessive where it represented approximately 7.9 percent of the violator's gross revenues); *Hoosier Broadcasting Corporation*, Forfeiture Order, 15 FCC Rcd 8640 (2002) (forfeiture not deemed excessive where it represented approximately 7.6 percent of the violator's gross revenues).

<sup>14</sup> 47 U.S.C. §§ 301, 503(b); 47 C.F.R. §§ 0.111, 0.204, 0.311, 0.314, 1.80(f)(4), 95.140, 95.411.

<sup>15</sup> 47 U.S.C. § 504(a).

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. Please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: ARINQUIRIES@fcc.gov with any questions regarding payment procedures. Mr. Hays shall also send electronic notification to SCR-Response@fcc.gov on the date said payment is made.

7. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by both First Class and Certified Mail, Return Receipt Requested, to John Hays at his address of record.

FEDERAL COMMUNICATIONS COMMISSION

Dennis P. Carlton  
Regional Director, South Central Region  
Enforcement Bureau