

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

In the Matter of)	File No.: EB-11-TP-0016
)	
Michael W. Perry)	NAL/Acct. No.: 201232700003
)	
Cross City, FL)	FRN: 0021257456
)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE AND ORDER

Adopted: November 1, 2011

Released: November 1, 2011

By the District Director, Tampa Office, South Central Region, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture and Order (“*NAL*”), we find that Michael W. Perry (“Mr. Perry”) apparently willfully violated section 301 of the Communications Act of 1934, as amended (“Act”),¹ and sections 95.409 and 95.411 of the Commission’s rules (“Rules”),² by operating a radio transmitter without the requisite Commission authorization. We conclude that Mr. Perry is apparently liable for a forfeiture in the amount of ten thousand dollars (\$10,000). In addition, no later than thirty (30) calendar days from the date of this *NAL*, Mr. Perry must submit a statement signed under penalty of perjury that he is no longer engaged in unlicensed radio operations.

II. BACKGROUND

2. On March 31, 2011, in response to a complaint of interference, agents from the Enforcement Bureau’s Tampa Office (“Tampa Office”), used direction-finding techniques to locate the source of the interference to a signal on Citizens Band (“CB”) channel 28 (on frequency 27.2850 MHz), emanating from Mr. Perry’s residence. The same day, agents from the Tampa Office inspected Mr. Perry’s CB station, which he admitted to using earlier that day. The agents observed a non-certificated CB transmitter and three linear amplifiers as part of Mr. Perry’s CB station. Mr. Perry admitted to the agents that two of the three linear amplifiers were capable of generating a power output of 200 watts and 1,500 watts, respectively, and that he had never tested the third. The agents observed that the transmitter and two of the amplifiers were warm to the touch, indicating that the devices had been recently operated.

III. DISCUSSION

3. Section 503(b) of the Act³ provides that any person who willfully fails to comply substantially with the terms and conditions of any license, or willfully 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

¹ 47 U.S.C. § 301.

² 47 C.F.R. §§ 95.409, 95.411.

³ 47 U.S.C. § 503(b).

deliberate commission or omission of [any] act, irrespective of any intent to violate” the law.⁴ 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 Act⁵ and the Commission has so interpreted the term in the section 503(b) context.⁶

4. 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.⁷ Section 95.404 of the Rules states that CB operators are not required to have individual licenses because they are authorized by this rule to operate a CB station, provided, however, that they operate the station in accordance with Subpart D of Part 95 of the Rules (“CB Rules”).⁸ Operation of CB stations in a manner that is inconsistent with the CB Rules requires a license pursuant to section 301 of the Act.⁹ Section 95.409(a) of the Rules states that CB operators must use FCC certificated CB transmitters at their CB stations and the use of a transmitter that is not FCC certificated voids the authority to operate the station.¹⁰ On March 31, 2011, agents from the Tampa Office observed signals on CB channel 28 emanating from Mr. Perry’s residence. Agents from the Tampa Office observed a non-certificated transmitter that was warm to the touch, indicating recent operation. During an inspection of the CB station on March 31, 2011, Mr. Perry admitted to the agents that he used the non-certificated CB transmitter. Because Mr. Perry operated a non-certificated CB transmitter, he no longer had authority to operate the CB station. As a result, due to Mr. Perry’s conscious operation of a non-certificated CB transmitter, we find the apparent violation willful. Based on the evidence before us, we find that Mr. Perry apparently willfully violated section 301 of the Act and section 95.409 of the Rules by operating an unlicensed and non-certificated CB transmitter.

5. Section 95.411(a) of the Rules states that CB operators may not attach external radio frequency (RF) power amplifiers (sometimes called “linears” or “linear amplifiers”) to certificated CB transmitters in any way.¹¹ Section 95.411(b) of the Rules states that there are no exceptions to this rule and that use of a power amplifier voids the authority to operate the station.¹² During the inspection of Mr. Perry’s CB station on March 31, 2011, Mr. Perry admitted using two of the three linear amplifiers

⁴ 47 U.S.C. § 312(f)(1).

⁵ H.R. Rep. No. 97-765, 97th 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 act (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 . . .”).

⁶ 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).

⁷ 47 U.S.C. § 301.

⁸ 47 C.F.R. § 95.404.

⁹ 47 U.S.C. § 301.

¹⁰ 47 C.F.R. § 95.409(a).

¹¹ 47 C.F.R. § 95.411(a).

¹² 47 C.F.R. § 95.411(b). Use of the amplifier will be presumed if the RF amplifier is located on the operator’s premises and if there is other evidence that the station was operated overpower. 47 C.F.R. § 95.411(c).

observed next to his non-certificated CB transmitter. The agents observed that the two amplifiers were warm to the touch during the inspection, indicating that they were recently operated. Because Mr. Perry operated his CB station with two linear amplifiers attached, he no longer had the authority to operate the CB station. Because he consciously operated with unauthorized amplifiers, we find that the apparent violation was willful. Therefore, based on the evidence before us, we find that Mr. Perry apparently willfully violated section 301 of the Act and section 95.411 of the Rules by operating an unlicensed radio transmitter with two amplifiers.

6. Pursuant to the Commission's *Forfeiture Policy Statement* and section 1.80 of the Rules, the base forfeiture amount for operating without an instrument of authorization is \$10,000.¹³ 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.¹⁴ Applying the *Forfeiture Policy Statement*, section 1.80 of the Rules, and the statutory factors to the instant case, we conclude that Mr. Perry is apparently liable for a forfeiture in the amount of \$10,000.

7. We direct Mr. Perry to submit a statement signed under penalty of perjury that, to the extent he is engaged in CB operations, he: (1) is using a certified CB transmitter; and (2) has not attached any linear amplifiers to his CB station. This statement must be provided to the Tampa Office at the address listed in paragraph 12 within thirty (30) calendar days of the release date of this *NAL*. Failure to comply with this requirement could subject the licensee to additional enforcement action.

IV. ORDERING CLAUSES

8. Accordingly, **IT IS ORDERED** that, pursuant to section 503(b) of the Act, and sections 0.111, 0.204, 0.311, 0.314, and 1.80 of the Rules, Michael W. Perry is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE AND ORDER** in the amount of ten thousand dollars (\$10,000) for violations of section 301 of the Act and sections 95.409 and 95.411 of the Rules.¹⁵

9. **IT IS FURTHER ORDERED** that, pursuant to section 1.80 of the Rules, within thirty (30) calendar days of the release date of this Notice of Apparent Liability for Forfeiture and Order, Michael W. Perry **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

10. **IT IS FURTHER ORDERED** that Michael W. Perry **SHALL SUBMIT** a statement as described in paragraph 7, *supra*, to the Tampa Office within thirty (30) calendar days of the release date of this Notice of Apparent Liability for Forfeiture and Order.

11. 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 Account Number and FRN referenced above. Payment by check or money order may be mailed to

¹³ *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*"); 47 C.F.R. § 1.80.

¹⁴ 47 U.S.C. § 503(b)(2)(E).

¹⁵ 47 U.S.C. §§ 301, 503(b); 47 C.F.R. §§ 0.111, 0.204, 0.311, 0.314, 1.80, 95.409, 95.411.

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. 20554.¹⁶ If you have questions about payment procedures, please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: ARINQUIRIES@fcc.gov. Mr. Perry shall send electronic notification on the date said payment is made to SCR-Response@fcc.gov.

12. 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.¹⁷ The written statement must be mailed to Federal Communications Commission, Enforcement Bureau, South Central Region, Tampa Office, 4010 W. Boy Scout Blvd., Suite 425, Tampa, Florida 33607 and must include the NAL/Acct. No. referenced in the caption. Mr. Perry also shall email the written response to SCR-Response@fcc.gov.

13. 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.

14. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture and Order shall be sent by both, Certified Mail, Return Receipt Requested, and regular mail, to Michael W. Perry at his address of record.

FEDERAL COMMUNICATIONS COMMISSION

Ralph M. Barlow
District Director
Tampa Office
South Central Region
Enforcement Bureau

¹⁶ See 47 C.F.R. § 1.1914.

¹⁷ 47 C.F.R. §§ 1.16, 1.80(f)(3).