

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

In the Matter of)	File No.: EB-10-TP-0016
)	
Vincent E. Aversa, Jr.)	NAL/Acct. No: 201132700002
)	
Indialantic, FL)	FRN: 0020584777
)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: February 7, 2011

Released: February 8, 2011

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

I. INTRODUCTION

1. In this *Notice of Apparent Liability for Forfeiture* (“NAL”), we find that Vincent E. Aversa, Jr. (“Mr. Aversa”) apparently willfully and repeatedly violated section 301 of the Communications Act of 1934, as amended (“Act”) and section 80.13 of the Commission’s rules (“Rules”),¹ by operating radio transmission equipment without a license on the International Distress, Safety, and Calling Channel (“Marine Safety Channel 16”).² We conclude that Mr. Aversa is apparently liable for a forfeiture in the amount of twenty thousand dollars (\$20,000).

II. BACKGROUND

2. On February 1, 2010, the United States Coast Guard (“USCG”) contacted agents at the Enforcement Bureau’s Tampa Field Office (“Tampa Office”) regarding interference the USCG had been receiving on Marine Safety Channel 16. Specifically, a man later identified as Mr. Aversa had been operating on Marine Safety Channel 16 periodically since November of 2009 to relay non-emergency information. The USCG later provided multiple audio recordings of what appeared to be Mr. Aversa operating on Marine Safety Channel 16 covering a three-month period lasting between December of 2009 and February of 2010. On all but one of the recordings, the USCG warned this individual on the air that his transmissions on Marine Safety Channel 16 were unauthorized, and, on several of the recordings, the USCG directed him to cease transmitting.

3. On February 10 and 11, 2010, agents from the Tampa Office used direction-finding techniques to locate the source of transmissions on Marine Safety Channel 16 to an automobile being driven by Mr. Aversa in Melbourne, Florida. On both days during the course of these transmissions, the USCG again warned Mr. Aversa on the air that his transmissions on Marine Safety Channel 16 were unauthorized and directed him to cease transmission. On both days, the agents also observed Mr. Aversa alone in his vehicle, talking on a hand held microphone, which was connected to a marine radio. Moreover, the agents heard Mr. Aversa’s voice through the car window and on the FCC vehicle receiver.

¹ 47 U.S.C. § 301; 47 C.F.R. § 80.13.

² The frequency 156.800 MHz, channel 16, is the international distress, safety, and calling channel. See 47 C.F.R. § 80.369(e)(3).

A review of the Commission's records revealed that Mr. Aversa does not have a license to operate a radio station on Marine Safety Channel 16 in Melbourne, Florida, or any other location.

4. On February 12, 2010, agents from the Tampa Office again used direction-finding techniques to locate the source of transmissions on Marine Safety Channel 16 and other Marine channels,³ lasting almost two continuous hours, to an automobile driven by Mr. Aversa in Melbourne, Florida. While being interviewed by the agents after Mr. Aversa exited the automobile, Mr. Aversa admitted to operating a radio to talk on Marine Safety Channel 16 and other Marine channels and voluntarily relinquished his marine radio.

III. DISCUSSION

5. 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.⁴ The term "willful" as used in section 503(b) of the Act has been interpreted to mean simply that the acts or omissions are committed knowingly.⁵ The term "repeated" means the commission or omission of such act more than once or for more than one day.⁶

6. 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.⁷ Section 80.13 of the Rules states that, except for ship stations, stations in the maritime service must be licensed by the FCC either individually or by fleet.⁸ Marine Safety Channel 16 is the international distress, safety, and calling channel and is designed to be used for distress, urgency, safety, call and reply radiotelephony communications.⁹ As discussed above, Mr. Aversa does not hold a license to operate a land-based station on Channel 16 (156.800 MHz). According to audio recordings provided by the USCG, there were many unauthorized communications to the USCG made on Marine Safety Channel 16 by a voice later identified as Mr. Aversa between December 2009 and February 2010, despite USCG warnings on the air that such communications were unauthorized. On February 10, 11, and 12, 2010, agents from the Tampa Office observed Mr. Aversa operating a marine radio on Marine Safety Channel 16. On February 12, 2010, Mr. Aversa admitted to agents from the Tampa Office that he operated his marine radio on Marine Safety

³ Mr. Aversa was also heard and seen by agents from the Tampa Office operating on Marine Channels 71, 81, 82, 84, 85, 87, and 88 in violation of section 301 of the Act and section 80.13 of the Rules.

⁴ 47 U.S.C. § 503(b).

⁵ Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under section 503(b) of the Act, provides that "[t]he term 'willful,' when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act or any rule or regulation of the Commission authorized by this Act...." See, e.g., *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387 (1991), *recon. denied*, 7 FCC Rcd 3454 (1992).

⁶ 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."

⁷ 47 U.S.C. § 301.

⁸ 47 C.F.R. § 80.13(a).

⁹ 47 C.F.R. § 80.369.

Channel 16 and other Marine channels. Because Mr. Aversa knowingly operated on Marine Safety Channel 16 and other Marine channels, we find that the apparent violation is willful. Moreover, because agents observed Mr. Aversa's unlicensed operations on three separate occasions (all of which occurred after Mr. Aversa received multiple audio warnings from the USCG), we find that the apparent violation was repeated.

7. Pursuant to section 1.80 of the Rules and the Commission's *Forfeiture Policy Statement*, the base forfeiture amount for operation without an instrument of authorization is \$10,000.¹⁰ 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.¹¹ Based on the criteria in section 503(b)(2)(E) of the Act, and the upward adjustment criteria in the *Forfeiture Policy Statement*, we find that an upward adjustment in the amount of \$10,000 is warranted.¹² We find that his apparent willful and repeated operation on a Marine Safety Channel is particularly egregious based on the intentional nature of the violation, and because Mr. Aversa: (1) operated a marine radio on an unlicensed basis for over four months; (2) transmitted continuously for hours at a time about non-safety-related topics thereby hindering access to a Marine Safety Channel,¹³ and (3) disregarded repeated warnings from the USCG about his unauthorized operation. Applying the *Forfeiture Policy Statement*, section 1.80 of the Rules, and the statutory factors, we conclude that Mr. Aversa is apparently liable for a forfeiture in the amount of \$20,000.

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, and 1.80 of the Rules, Vincent Aversa, Jr. is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of twenty thousand dollars (\$20,000) for violation of section 301 of the Act and section 80.13 of the Rules.¹⁴

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

¹⁰ *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.

¹¹ 47 U.S.C. § 503(b)(2)(E).

¹² *Id.*; 47 C.F.R. § 1.80(b)(4); see also *Forfeiture Policy Statement*, 12 FCC Rcd at 17100 – 01; *Robert Brown*, Notice of Apparent Liability for Forfeiture, 25 FCC Rcd 13740 (Enf. Bur. 2010) (assessed proposed forfeiture of \$15,000 for violation of section 301 of the Act because violations occurred on two days and with full knowledge that such action violated the rules); *Loyd Morris*, Notice of Apparent Liability for Forfeiture, 25 FCC Rcd 13736 (Enf. Bur. 2010) (assessed proposed forfeiture of \$15,000 for violation of section 301 of the Act because violations occurred on two days and with full knowledge that such action violated the rules); *American Taxi and Shuttle, Inc.*, Notice of Apparent Liability for Forfeiture, 25 FCC Rcd 13387 (Enf. Bur. 2010) (assessed proposed forfeiture of \$20,000 for violation of section 302 of the Act because violations occurred on three days and with full knowledge that such action violated the rules).

¹³ On February 10, 11, and 12, 2010, agents from the Tampa Office recorded Mr. Aversa's transmissions. Mr. Aversa discussed various conspiracy theories, sang songs, and described local landmarks, but he did not mention anything about ships in distress.

¹⁴ 47 C.F.R. §§ 0.111, 0.204(b), 0.311, 1.80, 80.13; 47 U.S.C. § 301.

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 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. 20554.⁸ If you have questions, please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: ARINQUIRIES@fcc.gov. Mr. Aversa shall also send electronic notification to SCR-Response@fcc.gov on the date said payment is made.

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.¹⁵ 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. The statement should also be emailed to SCR-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.

¹⁵ 47 C.F.R. §§ 1.16, 1.80(f)(3).

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 Vincent Aversa, Jr. at his address of record.

FEDERAL COMMUNICATIONS COMMISSION

Ralph Barlow
District Director
Tampa Office
South Central Region
Enforcement Bureau