

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

In the Matter of)
Nathaniel Johnson) File No.: EB-FIELDNER-12-00002628
Owner and Operator of Citizens Band Station,) NAL/Acct. No.: 201332400002
Pittsburgh, Pennsylvania) FRN: 0022693972

NOTICE OF APPARENT LIABILITY FOR FORFEITURE AND ORDER

Adopted: May 14, 2013

Released: May 14, 2013

By the District Director, Philadelphia Office, Northeast Region, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture and Order (NAL), we find that Nathaniel Johnson, owner and operator of a Citizens Band (CB) station in Pittsburgh, Pennsylvania, apparently willfully and repeatedly violated Section 303(n) of the Communications Act of 1934, as amended (Act),1 and Section 95.426(a) of the Commission’s rules (Rules),2 by failing to make his CB station available for inspection by authorized FCC representatives; and also willfully violated Section 95.423 of the Rules, by failing to comply with the restricted hours of CB station operation as required in an official FCC notice.3 We conclude that Mr. Johnson is apparently liable for a forfeiture in the amount of eighteen thousand dollars (\$18,000). In addition, we direct Mr. Johnson to submit, no later than thirty (30) calendar days from the date of this NAL, a sworn statement confirming compliance with the operational restrictions of his CB station and specifying a date and time for inspection of his CB station.

II. BACKGROUND

2. On January 19, 2012, the FCC received a complaint that Mr. Johnson’s CB station was causing interference to his neighbors’ telephone and television reception.4 When agents in the Enforcement Bureau’s Philadelphia Office (Philadelphia Office) attempted to conduct an on-scene inspection at Mr. Johnson’s residence on February 16, 2012, no one answered the agents’ knock on the door. On March 19, 2012, the Philadelphia Office sent a Warning Letter (by both certified and first class mail) to Mr. Johnson, directing him to contact the Philadelphia Office within ten (10) calendar days to schedule an inspection.5

1 47 U.S.C. § 303(n).

2 47 C.F.R. § 95.426(a).

3 47 C.F.R. § 95.423.

4 See Letter from Senator Robert P. Casey, Jr., to Greg Guice, Acting Director, Office of Legislative Affairs, FCC (Jan. 19, 2012) (on file in EB-FIELDNER-12-00002628).

5 See Letter from David Dombrowski, Acting District Director, Philadelphia Office, Enforcement Bureau, to Nathaniel Johnson (March 19, 2012) (on file in EB-FIELDNER-12-00002628). The copy of the letter that was sent by Certified Mail, Return Receipt Requested, was returned unclaimed; however, the copy that was sent by U.S. first class mail was not returned.

The Warning Letter also specified that if the harmful interference continued, and arrangements were not made with the Philadelphia Office to schedule an inspection, the Commission might impose restricted hours of operation for the CB station. Mr. Johnson did not contact the Philadelphia Office to schedule an inspection as directed.

3. On May 14, 2012, after continuing to receive additional interference complaints, the Philadelphia Office sent a letter (by both certified and first class mail) to Mr. Johnson, pursuant to Section 95.423(b) of the Rules,⁶ directing him, his family, and any guests visiting him, not to operate any base or mobile CB radio transmitter from his residence or adjacent roadways between the hours of 8 a.m. and 11:30 p.m. (hereinafter referred to as “Quiet Hours”) until he contacted the Philadelphia Office to make arrangements for an inspection of his CB radio facility and an inspection was completed.⁷ Mr. Johnson was warned that a violation of the restriction could result in the imposition of a forfeiture. Again, Mr. Johnson did not contact the Philadelphia Office to schedule an inspection.

4. After issuance of the May 14, 2012, letter, the Philadelphia Office continued to receive complaints from Mr. Johnson’s neighbors concerning the same radio interference issue to their televisions and telephones. On June 12, 2012, the Philadelphia Office issued Mr. Johnson another Warning Letter, which informed him about the complaints and reminded him that the Quiet Hours restriction imposed in the May 14, 2012, letter remained in effect until he contacted the Philadelphia Office to schedule an inspection and an inspection is completed.⁸ The letter specifically directed Mr. Johnson to contact the Philadelphia Office within ten (10) calendar days from the date on the letter to schedule an inspection or face potential enforcement action, including the imposition of a forfeiture. The Philadelphia Office did not receive a response to the letter.

5. On October 11, 2012, agents from the Philadelphia Office performed an on-scene investigation to confirm the source of interference to televisions and telephones in Mr. Johnson’s neighborhood. At 9:55 a.m. (during the Quiet Hours period), the agents monitored multiple radio transmissions on the frequencies 27.025 MHz, 27.055 MHz, and 27.015 MHz. The agents used radio direction finding techniques and confirmed that transmissions were emanating from a CB station located at Mr. Johnson’s residence, which the agents believed was the source of the interference. Immediately thereafter, the agents knocked multiple times on the door of the residence, but no one answered; however, the transmissions on 27.025 MHz, 27.055 MHz, and 27.015 MHz ceased, suggesting that Mr. Johnson (or someone he designated) turned off the CB station while the agents were outside the residence. The agents left copies of the *June 12 Warning Letter* (on Mr. Johnson’s front door, back door, and in his mailbox) to remind him of the operational restrictions and the directive to immediately contact the Philadelphia Office to schedule an inspection. As of the date of this NAL, Mr. Johnson still has not contacted the Philadelphia Office, and the Philadelphia Office continues to receive interference complaints concerning Mr. Johnson’s CB station.

⁶ 47 C.F.R. § 95.423(b).

⁷ See Letter from Kevin Doyle, Acting District Director, Philadelphia Office, Enforcement Bureau, to Nathaniel Johnson (May 14, 2012) (on file in EB-FIELDNER-12-00002628). The Philadelphia Office received the signed certified mail return receipt card; the card reflects that it was signed by a Mr. Johnson, as recipient, and dated May 16, 2012.

⁸ See Letter from Kevin Doyle, Acting District Director, Philadelphia Office, Enforcement Bureau, to Nathaniel Johnson (June 12, 2012) (on file in EB-FIELDNER-12-00002628) (*June 12 Warning Letter*). The copy of the letter that was sent by Certified Mail, Return Receipt Requested, was returned unclaimed; however, the copy of the letter that was sent by U.S. first class mail was not returned.

III. DISCUSSION

6. 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.⁹ 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.¹⁰ The legislative history to Section 312(f)(1) of the Act clarifies that this definition of willful applies to both Sections 312 and 503(b) of the Act,¹¹ and the Commission has so interpreted the term in the Section 503(b) context.¹² The Commission may also assess a forfeiture for violations that are merely repeated, and not willful.¹³ The term “repeated” means the commission or omission of such act more than once or for more than one day.¹⁴

A. Failure to Comply with Restricted Hours of CB Station Operation

7. The evidence in this case is sufficient to establish that Mr. Johnson violated Section 95.423 of the Rules. Section 95.423(a) of the Rules states that if the FCC informs a CB operator that his or her station is causing interference for technical reasons, the operator must follow all instructions in the official FCC notice, including any request to make technical adjustments to equipment.¹⁵ Further, Section 95.423(b) requires such operators to comply with any restricted hours of CB station operation provided in the official notice.¹⁶ On May 14, 2012, the Philadelphia Office issued an official letter to Mr. Johnson restricting him, his family, or any guests from operating a CB Station between the hours of 8:00 a.m. and 11:30 p.m. (the “Quiet Hours” period) from his residence or adjacent roadways until he scheduled an inspection with the FCC and the operational restriction is lifted.¹⁷ A certified copy of the letter was signed by Mr. Johnson on May 16, 2012, confirming his receipt. Despite receiving notification prohibiting CB operations during Quiet Hours, the Commission continued to receive complaints alleging interference from CB operations from Mr. Johnson’s residence. Indeed, on October 11, 2012, agents

⁹ 47 U.S.C. § 503(b).

¹⁰ 47 U.S.C. § 312(f)(1).

¹¹ 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”).

¹² See, e.g., *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991), *recons. denied*, 7 FCC Rcd 3454 (1992).

¹³ See, e.g., *Callais Cablevision, Inc.*, Notice of Apparent Liability for Monetary Forfeiture, 16 FCC Rcd 1359, 1362, para. 10 (2001) (*Callais Cablevision, Inc.*) (proposing a forfeiture for, *inter alia*, a cable television operator’s repeated signal leakage).

¹⁴ 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.” See *Callais Cablevision, Inc.*, 16 FCC Rcd at 1362.

¹⁵ 47 C.F.R. § 95.423(a).

¹⁶ 47 C.F.R. § 95.423(b).

¹⁷ See *supra* note 7.

from the Philadelphia Office confirmed that CB radio transmissions were emanating from Mr. Johnson's residence at 9:55 a.m., which is within the Quiet Hours period. Based on the evidence before us, we find that Mr. Johnson apparently willfully violated Section 95.423 of the Rules by failing to comply with an official FCC notice prohibiting operation of his CB Station during Quiet Hours.

B. Repeated Failure to Allow Inspection of a CB Station

8. The evidence in this case also establishes that Mr. Johnson repeatedly violated Section 303(n) of the Act and Section 95.426(a) of the Rules. Section 303(n) of the Act states that the Commission has the "authority to inspect all radio installations associated with stations required to be licensed by any Act, or which the Commission by rule has authorized to operate without a license under [S]ection 307(e)(1)."¹⁸ Section 307(e)(1) expressly includes "the citizen band radio service."¹⁹ With respect to the Commission's rules, Section 95.426(a) of the Rules (CB Rule 26) states: "If an authorized FCC representative requests to inspect your CB station, you must make your CB station and records available for inspection."²⁰

9. As the record reflects, FCC agents directed Mr. Johnson on multiple occasions (i.e., by issuance of an official FCC letter notice on March 19, 2012; May 14, 2012; and June 12, 2012) to immediately contact the Philadelphia Office to schedule an inspection of his CB station in light of complaints alleging interference caused by his CB station. Notwithstanding those directives, Mr. Johnson never contacted the Philadelphia Office to schedule an inspection, and apparently continued to operate his CB station in direct violation of the Quiet Hours restriction provided in the May 14, 2012, notice from the FCC. On October 11, 2012, FCC agents conducted an on-scene inspection at Mr. Johnson's residence after receiving further complaints of interference from his neighbors. During the on-scene inspection, the agents confirmed, at around 9:55 a.m. (during the Quiet Hours period), that CB radio transmissions were emanating from Mr. Johnson's home. The agents, thereafter, knocked on the door of the residence in an attempt to interview Mr. Johnson and inspect his CB station, but Mr. Johnson did not answer, although the transmissions immediately ceased, suggesting that someone inside the residence (likely Mr. Johnson) turned off the CB station. Given Mr. Johnson's apparent refusal to answer the agents' repeated knocks on his door, the agents proceeded to leave multiple copies of the *June 12 Warning Letter* in Mr. Johnson's mailbox and on various exterior doors of the residence. To date, Mr. Johnson has not contacted the Philadelphia Office as directed, and complaints of interference from his CB operations remain unabated. Based on the evidence before us, we find that Mr. Johnson apparently willfully and repeatedly violated Section 303(n) of the Act and Section 95.426(a) of the Rules by failing to make his CB Station available for inspection.

C. Proposed Forfeiture and Inspection Requirement

10. Pursuant to the Commission's *Forfeiture Policy Statement* and Section 1.80 of the Rules, the base forfeiture amount for failure to allow inspection of radio equipment (including a CB station) is \$7,000.²¹ Although there is no base forfeiture amount in Section 1.80 of the Rules for failure to comply with a Commission directive prohibiting CB operations during specific hours, we find that the nature of the violation in this case is similar to a failure to respond to a Commission communication, which carries a base

¹⁸ 47 U.S.C. § 303(n).

¹⁹ 47 U.S.C. § 307(e)(1) ("[T]he Commission may by rule authorize the operation of radio stations without individual licenses in the . . . citizens band radio service . . .").

²⁰ 47 C.F.R. § 95.426(a).

²¹ *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*), *recons. denied*, 15 FCC Rcd 303 (1999); 47 C.F.R. § 1.80.

forfeiture amount of \$4,000.²² 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.²³

11. In this case, we find that Mr. Johnson's failure to permit a lawful inspection of his CB station, after multiple notices directing him to do so, justifies a \$7,000 upward adjustment of the base amount for this violation.²⁴ Misconduct of this type is serious, exhibits contempt for the Commission's authority, and threatens to compromise the Commission's ability to fully investigate violations of its rules. As such, we caution Mr. Johnson that a failure to schedule an inspection as directed in this NAL may result in the imposition of additional (and potentially higher) forfeitures, as well as other enforcement actions, as appropriate, including the seizure of his equipment.²⁵ Applying the *Forfeiture Policy Statement*, Section 1.80 of the Rules, and the statutory factors to the instant case, we conclude that Mr. Johnson is apparently liable for a total forfeiture in the amount of \$18,000.

12. We further order Mr. Johnson to submit a written statement, pursuant to Section 1.16 of the Rules, signed under penalty of perjury, confirming compliance with the Quiet Hours restriction and specifying an appropriate date and time (during FCC business hours and a date no later than forty-five (45) calendar days from issuance of this NAL) when FCC agents can inspect his CB Station.²⁶ This statement must be provided to the Philadelphia Office at the address listed in paragraph 15, below, within thirty (30) calendar days of the release date of this NAL.

IV. ORDERING CLAUSES

13. 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 of the Commission's rules, Nathaniel Johnson is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of eighteen thousand dollars (\$18,000) for violations of Section 303(n) of the Act and Sections 95.423 and 95.426(a) of the Rules.²⁷

14. **IT IS FURTHER ORDERED** that, pursuant to Section 1.80 of the Commission's rules, within thirty (30) calendar days of the release date of this Notice of Apparent Liability for Forfeiture and Order, Nathaniel Johnson **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

15. **IT IS FURTHER ORDERED** that Nathaniel Johnson **SHALL SUBMIT** a written statement, as described in paragraph 12, above, within thirty (30) calendar days of the release date of this Notice of Apparent Liability for Forfeiture and Order. The statement must be mailed to Federal Communications Commission, Enforcement Bureau, Northeast Region, Philadelphia Office, 2300 East

²² See *id.*

²³ 47 U.S.C. § 503(b)(2)(E).

²⁴ See, e.g., *Gabriel A. Garcia*, Notice of Apparent Liability for Forfeiture, 26 FCC Rcd 6692 (Enf. Bur. 2011) (proposing \$25,000 forfeiture for repeated failure to allow inspection of an unlicensed broadcast station), *aff'd*, Forfeiture Order, 27 FCC Rcd 2370 (Enf. Bur. 2012).

²⁵ See 47 U.S.C. §§ 401, 501, 503, 510. *Accord Michael William Downer*, Notice of Apparent Liability for Forfeiture, 27 FCC Rcd 7962, 7965, para. 8 (Enf. Bur. 2012).

²⁶ Mr. Johnson can also call the Philadelphia Office at (215) 741-3016 within thirty (30) calendar days of the release of this NAL to schedule a date for an inspection.

²⁷ 47 U.S.C. §§ 303(n), 503(b); 47 C.F.R. §§ 0.111, 0.204, 0.311, 0.314, 1.80, 95.423, 95.426(a).

Lincoln Highway, One Oxford Valley Building, Suite 404, Langhorne, PA 19047. Nathaniel Johnson shall also e-mail the written statement to NER-Response@fcc.gov.

16. Payment of the forfeiture must be made by check or similar instrument, wire transfer, or credit card, and must include the NAL/Account number and FRN referenced above. Nathaniel Johnson shall also send electronic notification on the date said payment is made to NER-Response@fcc.gov. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted.²⁸ When completing the FCC Form 159, enter the Account Number in block number 23A (call sign/other ID) and enter the letters “FORF” in block number 24A (payment type code). Below are additional instructions you should follow based on the form of payment you select:

- Payment by check or money order must be made payable to the order of the Federal Communications Commission. Such payments (along with the completed Form 159) must be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.
- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. To complete the wire transfer and ensure appropriate crediting of the wired funds, a completed Form 159 must be faxed to U.S. Bank at (314) 418-4232 on the same business day the wire transfer is initiated.
- Payment by credit card must be made by providing the required credit card information on FCC Form 159 and signing and dating the Form 159 to authorize the credit card payment. The completed Form 159 must then be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.

17. Any request for full payment under an installment plan should be sent to: Chief Financial Officer—Financial Operations, Federal Communications Commission, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554.²⁹ If you have questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone, 1-877-480-3201, or by e-mail, ARINQUIRIES@fcc.gov.

18. 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 1.16 and 1.80(f)(3) of the Rules.³⁰ Mail the written statement to Federal Communications Commission, Enforcement Bureau, Northeast Region, Philadelphia Office, 2300 East Lincoln Highway, One Oxford Valley Building, Suite 404, Langhorne, PA 19047, and include the NAL/Acct. No. referenced in the caption. Nathaniel Johnson also shall e-mail the written response to NER-Response@fcc.gov.

19. 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 principles (GAAP); or (3) some other reliable and objective documentation that accurately reflects the petitioner’s current financial

²⁸ An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

²⁹ See 47 C.F.R. § 1.1914.

³⁰ 47 C.F.R. §§ 1.16, 1.80(f)(3).

status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

20. **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 First Class Mail to Nathaniel Johnson at his address of record.

FEDERAL COMMUNICATIONS COMMISSION

David Dombrowski
District Director
Philadelphia Office
Northeast Region
Enforcement Bureau