

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

In the Matter of)
)
Ronald Bethany)
dba Perfect Cuts Salon)
San Antonio, TX)

File No.: EB-FIELDSCR-13-00010114
Citation No.: C201432540001

CITATION AND ORDER

Incidental Radiator Causing Harmful Interference

Adopted: October 25, 2013

Released: October 28, 2013

By the Resident Agent, Houston Office, South Central Region, Enforcement Bureau:

I. INTRODUCTION

1. This is an official **CITATION AND ORDER** (Citation) issued pursuant to Section 503(b)(5) of the Communications Act of 1934, as amended (Communications Act or Act),¹ to Ronald Bethany dba Perfect Cuts Salon (Mr. Bethany). Specifically, Mr. Bethany is being cited for operating incidental radiators and causing harmful interference in violation of Section 15.5(b) of the Commission’s rules (Rules).²

2. Notice of Duty to Comply With Laws: Mr. Bethany should ensure that he does not utilize the incidental radiators prior to their repair or replacement and should take steps to eliminate all harmful interference. Mr. Bethany is hereby on notice that if he subsequently engages in any conduct of the type described in this Citation, including any violation of Section 15.5(b) of the Rules, he may be subject to civil penalties, including but not limited to substantial monetary fines (forfeitures) and seizure of equipment. Such forfeitures may be based on both the conduct that led to this Citation and the conduct following it.³

3. Your Response Required: Pursuant to Sections 4(i), 4(j), and 403 of the Communications Act,⁴ we also direct Mr. Bethany to respond in writing, within thirty (30) calendar days after the release date of this Citation. The response must state that he has ceased operating the incidental radiators and

¹ 47 U.S.C. § 503(b)(5).

² 47 C.F.R. § 15.5(b).

³ See 47 U.S.C § 503(b)(5). See also S. Rep. No. 95-580, 95th Cong., 1st Sess. at 9 (1977) (if a person or entity that has been issued a citation by the Commission thereafter engages in the conduct for which the citation of violation was sent, the subsequent notice of apparent liability “would attach not only for the conduct occurring subsequently but also for the conduct for which the citation was originally sent”) (emphasis added).

⁴ 47 U.S.C. §§ 154(i), 154(j), 403.

describe the specific action(s) taken or planned to eliminate all harmful interference. The response must be signed under penalty of perjury.

II. BACKGROUND

4. On July 24, 2013, in response to complaints of interference to licensed communications, an agent from the Commission's Houston Office of the Enforcement Bureau (Houston Office) used direction finding techniques to locate the source of transmissions on 705 MHz to the Perfect Cuts Salon business at 1968 South W.W. White Road, San Antonio, Texas. The agent used a spectrum analyzer and a hand held antenna to confirm that the signals on 705 MHz were emanating from the overhead fluorescent lighting in the salon. The agent then interviewed Mr. Bethany, the owner of the salon, who stated that representatives of AT&T had conducted on/off testing in the salon and confirmed that the interior fluorescent lighting was the source of interference to an AT&T cell site located next door. Mr. Bethany further stated that he had unsuccessfully asked General Electric, the manufacturer of the fluorescent lighting, to replace the lighting.⁵ Mr. Bethany would not cooperate, so the agent from the Houston Office was unable to conduct on/off testing of the fluorescent lighting in the salon. The agent verbally warned Mr. Bethany that he must repair or replace the lighting fixture to resolve the interference. On July 31, 2013, the agent spoke by telephone with Mr. Bethany, who stated that the lighting was not causing him any problems and that he saw no reason to repair or replace them unless he was paid to do so. The agent reiterated that Mr. Bethany must resolve the interference or be in violation of the Rules.

III. APPLICABLE LAWS AND VIOLATIONS

5. Section 15.5(b) of the Rules states that “[o]peration of an intentional, unintentional, or incidental radiator is subject to the conditions that no harmful interference is caused.”⁶ Section 15.3(m) of the Rules defines harmful interference as “any emission, radiation or induction that . . . seriously degrades, obstructs or repeatedly interrupts a radio communications service operating in accordance with this chapter.”⁷ Section 15.3(n) defines an “incidental radiator” as “[a] device that generates radio frequency energy during the course of its operation although the device is not intentionally designed to generate or emit radio frequency energy.”⁸ Section 15.5(c) of the Rules requires that “[t]he operator of the radio frequency device shall be required to cease operating the device upon notification by a Commission representative that the device is causing harmful interference.”⁹

6. Pursuant to Section 15.5(c) of the Rules, on July 24, 2013, Mr. Bethany was notified that incidental radiators, the lighting fixtures, were causing harmful interference to licensed communications. On July 31, 2013, Mr. Bethany stated that he would not pay to repair or replace the lighting and that he had not resolved the interference issue. To date, AT&T continues to report receiving interference at its cell site next door to Mr. Bethany's salon. Based on the foregoing evidence, we find that Mr. Bethany violated Section 15.5(b) of the Rules by operating incidental radiators and causing harmful interference.

⁵ A Commission agent received information, which Mr. Bethany confirmed, that he rejected General Electric's offer to install replacement lighting, because he sought cash to handle replacement and installation himself.

⁶ 47 C.F.R. § 15.5(b).

⁷ 47 C.F.R. § 15.3(m).

⁸ 47 C.F.R. § 15.3(n). Under this definition, light fixtures, such as the ones used by Mr. Bethany, are incidental radiators.

⁹ 47 C.F.R. § 15.5(c).

Moreover, Mr. Bethany is directed to cease operation of the incidental radiators, the lighting fixtures, immediately, until the interference can be resolved.

IV. REQUEST FOR INFORMATION

7. Pursuant to Sections 4(i), 4(j), and 403 of the Communications Act,¹⁰ Mr. Bethany is directed to describe the steps he has taken or plans to take to eliminate the harmful interference caused by his incidental radiators, *i.e.*, lighting fixtures, as well as a timeline for any pending corrective actions, within thirty (30) calendar days after the release date of this Citation. A failure to respond in writing, or an inadequate, incomplete, or misleading response, may subject Mr. Bethany to additional sanctions.¹¹

V. RESPONDING TO THIS CITATION

8. In addition to the required written information described in paragraphs 3 and 7, above, Mr. Bethany may, if he so chooses, respond to this Citation—challenging the factual and legal findings herein—within thirty (30) calendar days from the release date of this Citation either through (1) a written statement, (2) a teleconference interview, or (3) a personal interview at the Commission Field Office nearest to your place of business.

9. If you would like to arrange a teleconference or personal interview, please contact Stephen Lee at 713-983-9763. The nearest Commission Field Office is located in Houston, Texas. Such teleconference or interview must take place within thirty calendar (30) days of the date of this Citation. If you would like to submit a written response, including any supporting documentation, you must send the response within thirty (30) calendar days of the date of this Citation to the contact and address provided in paragraph 10, below.

10. All written communications, including the information requested in paragraphs 3 and 7, above, should be provided to the address below.

Stephen P. Lee
Federal Communications Commission
Houston Office
9597 Jones Road, #362
Houston, Texas 77065
Re: EB-FIELDSCR-13-00010114

11. Reasonable accommodations for people with disabilities are available upon request. Include a description of the accommodation you will need, and include as much detail as you can. Also

¹⁰ 47 U.S.C. §§ 154(i), 154(j), 403.

¹¹ See, e.g., *SBC Communications, Inc.*, Forfeiture Order, 17 FCC Rcd 7589, 7599–7600, paras. 23–28 (2002) (imposing \$100,000 forfeiture for egregious and intentional misconduct, *i.e.*, refusing to attest to truthfulness and accuracy of responses to a Letter of Inquiry (LOI)); *Connect Paging, Inc. d/b/a Get A Phone*, Forfeiture Order, 22 FCC Rcd 15146 (Enf. Bur. 2007) (imposing \$4,000 forfeiture for failure to respond to an LOI); *BigZoo.Com Corporation*, Order of Forfeiture, 20 FCC Rcd 3954 (Enf. Bur. 2005) (imposing \$20,000 forfeiture for failure to respond to a USF LOI); *Donald W. Kaminski, Jr.*, Forfeiture Order, 18 FCC Rcd 26065 (Enf. Bur. 2003) (imposing \$4,000 forfeiture for failure to respond to an LOI). See also *World Communications Satellite Systems, Inc.*, Notice of Apparent Liability for Forfeiture, 18 FCC Rcd 18545 (Enf. Bur. 2003) (proposing \$10,000 forfeiture for a non-responsive reply to an LOI); *Digital Antenna, Inc., Sunrise, Florida*, Notice of Apparent Liability for Forfeiture, 23 FCC Rcd 7600 (Enf. Bur. 2007) (proposing \$11,000 forfeiture for failure to provide complete responses to an LOI).

include a way we can contact you if we need more information. Please allow at least five (5) business days advance notice; last minute requests will be accepted, but may be impossible to fill. Send an e-mail to fcc504@fcc.gov or call the FCC's Consumer & Governmental Affairs Bureau:

For sign language interpreters, CART, and other reasonable accommodations:
202-418-0530 (voice), 202-418-0432 (tty);

For accessible format materials (braille, large print, electronic files, and audio format):
202-418-0531 (voice), 202-418-7365 (tty).

12. Please be advised that it is a violation of Section 1.17 of the Commission's rules (47 C.F.R. § 1.17) for any person or a staff member of that person to make any false or misleading written or oral statement of fact. Specifically, no person shall:

(1) In any written or oral statement of fact, intentionally provide material factual information that is incorrect or intentionally omit material information that is necessary to prevent any material factual statement that is made from being incorrect or misleading; and

(2) In any written statement of fact, provide material factual information that is incorrect or omit material information that is necessary to prevent any material factual statement that is made from being incorrect or misleading without a reasonable basis for believing that any such material factual statement is correct and not misleading.¹²

13. Further, the knowing and willful making of any false statement, or the concealment of any material fact, in reply to this Citation is punishable by fine or imprisonment under 18 U.S.C. § 1001.

14. If you violate Section 1.17 of the Commission's rules or the criminal statute referenced above, you may be subject to further legal action, including monetary fines pursuant to Section 503 of the Communications Act.¹³

15. Under the Privacy Act of 1974, 5 U.S.C. § 552a(e)(3), we are informing you that the Commission's staff will use all relevant material information before it, including information that you disclose in your interview or written statement, to determine what, if any, enforcement action is required to ensure your compliance with the Communications Act and the Commission's rules.

VI. FUTURE VIOLATIONS

16. If, after receipt of this Citation Mr. Bethany again violates Section 15.5(b) of the Rules by engaging in conduct of the type described herein, the Commission may impose monetary forfeitures not to exceed \$16,000 for each such violation or each day of a continuing violation, and up to \$112,500 for any single act or failure to act.¹⁴ For instance, the Commission could impose separate forfeitures for each day on which his incidental radiators cause harmful interference. Further, as discussed above, such

¹² 47 C.F.R. § 1.17.

¹³ 47 U.S.C. § 503.

¹⁴ See 47 U.S.C. §§ 401, 501, 503; 47 C.F.R. § 1.80(b)(7). This amount is subject to further adjustment for inflation (see 47 C.F.R. § 1.80(b)(9)), and the forfeiture amount applicable to any violation will be determined based on the statutory amount designated at the time of the violation.

forfeitures may be based on both the conduct that led to the Citation and the conduct following it.¹⁵ In addition, violations of the Communications Act or the Rules also can result in seizure of equipment through *in rem* forfeiture actions,¹⁶ as well as criminal sanctions, including imprisonment.¹⁷

VII. ORDERING CLAUSES

17. **IT IS ORDERED** that, pursuant to Sections 4(i), 4(j), and 403 of the Communications Act, Ronald Bethany must provide the written information requested in paragraphs 3 and 7, above. The response to the request for information must be provided in writing, signed under penalty of perjury by Mr. Bethany verifying the truth and accuracy of the information and representations provided in the written response, and must be received by the FCC within thirty (30) calendar days after the release date of this Citation and Order.

18. **IT IS FURTHER ORDERED** that a copy of this Citation and Order shall be sent both by First Class U.S. Mail and Certified Mail, Return Receipt Requested, to Ronald Bethany, dba Perfect Cuts Salon, 1968 South W.W. White, San Antonio, Texas 78222.

FEDERAL COMMUNICATIONS COMMISSION

Stephen P. Lee
Resident Agent, Houston Office
South Central Region
Enforcement Bureau

¹⁵ See paragraph 2, *supra*.

¹⁶ See 47 U.S.C. § 510.

¹⁷ See 47 U.S.C. §§ 401, 501.