

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

In the Matter of)	
)	
Alan D. Slater)	File Number: EB-FIELDWR-13-00006245
)	NAL/Acct. No: 201432920001
Licensee of WNQL715)	FRN: 0004644688
Mehama, Oregon)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: November 21, 2013

Released: November 22, 2013

By the Resident Agent, Portland Resident Agent Office, Western Region, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture (NAL), we find that Alan D. Slater, licensee of Private Land Mobile Radio Station WNQL715 in Mehama, Oregon, apparently willfully and repeatedly violated Section 301 of the Communications Act of 1934, as amended (Act)¹ and Section 1.903(a)–(b) of the Commission’s Rules (Rules)² by operating radio transmitting equipment on an unauthorized frequency, 854.4125 MHz, and at an unauthorized location in Hillsboro, Oregon. We conclude, pursuant to Section 503(b) of the Act,³ that Mr. Slater is apparently liable for a forfeiture in the amount of ten thousand dollars (\$10,000).

II. BACKGROUND

2. On January 17, 2013, in response to a complaint from the Washington County Consolidated Communications Agency (Washington County), licensee of Public Safety and Special Emergency Station WQPQ345 in Washington County, Oregon, alleging that an unidentified repeater transmitter was causing harmful co-channel interference to their licensed frequency 854.4125 MHz,⁴ an agent from the Enforcement Bureau’s Portland Resident Agent Office (Portland Office) monitored radio transmissions on the frequency 854.4125 MHz. Using radio direction finding techniques, the agent identified and located the source of the transmissions to a transmitter located at 21400 NE Bachelor Blvd., Hillsboro, Oregon. The agent conducted an FCC license database search and could not find any licenses authorized to operate on frequency 854.4125 MHz at this location. The agent then met with the property owner of the site who informed the agent that Mr. Slater was the tenant in the transmitter building. The Portland agent contacted Mr. Slater requesting to inspect the subject transmitter that was causing the interference.

¹ 47 U.S.C. § 301.

² 47 C.F.R. § 1.903(a)–(b).

³ 47 U.S.C. § 503(b).

⁴ See Complaint of Washington County Consolidated Communications Agency (Jan. 8 2013) (on file in EB-FIELDWR-13-00006245). The complaint indicated that the interference had been ongoing and was impacting its control channel for Station WQPQ345.

3. On January 18, 2013, the Portland agent met with an employee of Mr. Slater at the transmitter site and inspected the transceiver, which had frequency 854.4125 MHz clearly marked on the unit. To confirm that the transceiver operated on this frequency, the agent measured the transmitter output on frequency 854.4125 MHz with a frequency counter and verified the harmful interference by performing on-off tests with Washington County personnel. During the inspection, the agent was informed that Mr. Slater was the licensee of Station WNQL715. A review of Commission records revealed that the Station WNQL715 license did not authorize operation on frequency 854.4125 MHz and did not authorize operation at this transmitter location.⁵

4. On February 21, 2013, the Portland Office issued a *Warning Letter* to Mr. Slater for operating an unlicensed repeater on frequency 854.4125 MHz at an unauthorized location.⁶ In the *Warning Letter Response*, Mr. Slater did not contest the operation on frequency 854.4125 MHz, stating that he could not explain why the frequency was programmed into his equipment and that he had removed the equipment from operation.⁷ On March 29, 2013, the Portland agent conducted a follow-up inspection at the site and verified that the subject transmitter had been removed and was no longer in operation.

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.⁸ 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.⁹ 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,¹⁰ and the Commission has so interpreted the term in the Section 503(b) context.¹¹ The Commission may also assess a forfeiture for violations that are merely repeated, and not

⁵ On-scene warnings were issued to the owner of the property, *see* David Anderson, On-Scene Notice of Unlicensed Operation (Jan. 18, 2013) (on file in EB-FIELDWR-13-00006245), and Slater’s employee, *see* Gary Doherty, On-Scene Notice of Unlicensed Operation (Jan. 18, 2013) (on file in EB-FIELDWR-13-00006245). The owner of the property responded, stating that the offending transmitter was removed on January 19, 2013. *See* Letter of Response from David Anderson, President, Repeat-It, to Portland Resident Agent Office (Feb.13, 2013) (on file in EB-FIELDWR-13-00006245).

⁶ *See Alan D. Slater*, Warning for Unlicensed Radio Operation (Feb. 21, 2013) (on file in EB-FIELDWR-13-00006245) (*Warning Letter*).

⁷ *See* Letter of Response from Alan D. Slater, to Portland Resident Agent Office (Mar. 4, 2013) (on file in EB-FIELDWR-13-00006245) (*Warning Letter Response*).

⁸ 47 U.S.C. § 503(b).

⁹ 47 U.S.C. § 312(f)(1).

¹⁰ 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”).

¹¹ *See, e.g., Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388, para. 5 (1991), *recons. denied*, 7 FCC Rcd 3454 (1992).

willful.¹² The term “repeated” means the commission or omission of such act more than once or for more than one day.¹³

A. Unauthorized Operation

6. The record evidence in this case establishes that Mr. Slater operated radio station WNQL715 on an unauthorized frequency and at an unauthorized location. 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 issued by the Commission.¹⁴ Section 1.903(a) of the Rules requires that stations in the Wireless Radio Service must be used and operated only in accordance with the rules applicable to their particular service and with a valid authorization granted by the Commission.¹⁵ In addition, Section 1.903(b) provides that the holding of an authorization does not create any rights beyond the terms, conditions, and period specified in the authorization.¹⁶ Inspections conducted on January 17 and January 18, 2013, revealed that Mr. Slater was operating a land mobile station on frequency 854.4125 MHz, a frequency not authorized by the Station WNLQ715 license, at a location not authorized by the license. Therefore, based on the evidence before us, we find that Slater apparently willfully and repeatedly violated Section 301 of the Act and Section 1.930(a)–(b) of the Rules by operating radio transmitting equipment on an unauthorized frequency and at an unauthorized location.

B. Proposed Forfeiture Amount

7. Pursuant to the Commission’s *Forfeiture Policy Statement* and Section 1.80 of the Rules, the base forfeiture amount for operating on an unauthorized frequency is \$4,000 and the base forfeiture amount for operating at an unauthorized location is \$4,000.¹⁷ 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.¹⁸ Here, we find that an upward adjustment of the base forfeiture amount is warranted because of the gravity of the violations. As the record reflects, Mr. Slater’s unauthorized operations posed a significant public safety risk by causing interference to Washington County’s operation of its Public Safety and Special Emergency Station WQPQ345. Applying the *Forfeiture Policy Statement*, Section 1.80 of the Rules, and the statutory factors to the instant case, we conclude that Mr. Slater is apparently liable for a forfeiture in the

¹² 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).

¹³ 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, para. 9.

¹⁴ 47 U.S.C. § 301.

¹⁵ 47 C.F.R. § 1.903(a).

¹⁶ 47 C.F.R. § 1.903(b).

¹⁷ *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.

¹⁸ 47 U.S.C. § 503(b)(2)(E).

amount of \$10,000 for operating radio transmitting equipment on an unauthorized frequency and at an unauthorized location.¹⁹

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, 0.314, and 1.80 of the Commission's rules, Alan D. Slater is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of ten thousand dollars (\$10,000) for violations of Section 301 of the Communications Act of 1934, as amended, and Section 1.903(a)–(b) of the Commission's rules.²⁰

9. **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, Alan D. Slater **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

10. 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. Mr. Slater shall also send electronic notification on the date said payment is made to WR-Response@fcc.gov. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted.²¹ 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.

11. Any request for making full payment over time 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. 20554.²² If you have questions regarding payment

¹⁹ See, e.g., *Glenn S. Yamada*, Notice of Apparent Liability for Forfeiture and Order, 27 FCC Rcd 7949 (Enf. Bur. 2012) (proposing a 25% upward adjustment to a forfeiture for unauthorized operation that resulted in interference to an authorized user in the aeronautical safety of life band).

²⁰ 47 U.S.C. §§ 301, 503(b); 47 C.F.R. §§ 0.111, 0.204(b), 0.311, 0.314, 1.80, 1.903(a)–(b).

²¹ An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

²² See 47 C.F.R. § 1.1914.

procedures, please contact the Financial Operations Group Help Desk by phone, 1-877-480-3201, or by e-mail, ARINQUIRIES@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.²³ The written statement, if any, must be mailed to Federal Communications Commission, Enforcement Bureau, Western Region, Portland Resident Agent Office, P.O. Box 61469, Vancouver, Washington 98666-1469, and must include the NAL/Account Number referenced in the caption. The statement should also be emailed to WR-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 principles (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 shall be sent by both Certified Mail, Return Receipt Requested, and First Class Mail to Alan D. Slater, at his address of record.

FEDERAL COMMUNICATIONS COMMISSION

Binh Nguyen
Resident Agent
Portland Resident Agent Office
Western Region
Enforcement Bureau

²³ See 47 C.F.R. §§ 1.80(f)(3), 1.16.