

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

In the Matter of)	
)	
Terry L. VanVolkenburg)	File No.: EB-FIELDSCR-12-00004202
)	NAL/Acct. No.: 201332700001
Cocoa, FL)	FRN: 0002825925
)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: March 1, 2013

Released: March 1, 2013

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 Terry L. VanVolkenburg apparently willfully and repeatedly violated Sections 301 and 333 of the Communications Act of 1934, as amended (Act),¹ by operating a radio transmitter without a license on the frequency 465.300 MHz and interfering with licensed communications. We conclude that Mr. VanVolkenburg is apparently liable for a forfeiture in the amount of twenty five thousand dollars (\$25,000).

II. BACKGROUND

2. In September 2012, the Enforcement Bureau’s Tampa Office (Tampa Office) received a complaint of radio interference from the Brevard County Sheriff’s Department. The Sheriff’s Department, licensee of call sign WQCW384, utilizes a wireless radio communications system in the county jail in Sharpes, Florida. According to the complaint, during the months of September and October 2012, on at least 14 days, the Sheriff’s Department experienced intermittent interference to its radio communications in the jail on the frequency 456.300 MHz. Audio recordings taken by the Sheriff’s Department suggests that a male individual interfered with the prison’s communications by transmitting vulgar language, sound effects, previously recorded prison communications, and threats to prison officials over the prison’s communications system.² On September 10, September 19, October 3, October 7, October 19, and October 21, 2012, a prison official informed the individual over the air multiple times that he was interfering with prison communications and that he should cease operations. Those warnings were transmitted on the frequencies 460.300 MHz and 465.300 MHz.

3. In response, agents from the Tampa Office used direction-finding techniques on October 28, 2012, and traced the source of the interfering radio frequency transmissions on the frequency 465.300 MHz to a residence in Cocoa, Florida. The frequency 465.300 MHz is allocated to public safety stations,³

¹ 47 U.S.C. §§ 301, 333.

² Audio recordings were taken on September 8, 9, 10, 12, 15, 16, 19, and 20, 2012; and on October 3, 7, 19, 20, 21, and 22, 2012. The male individual threatened to take over the jail and shoot a deputy from his hiding place in the bushes. The voice also claimed to know officers’ names.

³ See 47 C.F.R. § 90.20(c)(3).

and Mr. VanVolkenburg is not eligible to hold an authorization in the Public Safety Pool.⁴ Moreover, the Commission's records showed that no authorization was issued to anyone to operate a private land mobile station at this location.

4. Approximately two hours after locating the source of the transmissions, agents from the Tampa Office inspected the radio stations in Mr. VanVolkenburg's residence. The agents recognized Mr. VanVolkenburg's voice as the one interfering with the prison's communications system. Mr. VanVolkenburg initially showed the agents an amateur radio, incapable of transmitting on 465.300 MHz, but eventually produced an Alinco DJ-C5 portable radio transceiver that could operate on 465.300 MHz. Mr. VanVolkenburg did not specifically admit that he had interfered with the prison's communications system, but when asked about the transmissions on 465.300 MHz and the interference to the prison's communications systems, he stated that he chose 465.300 MHz because the prison's transmissions on that frequency were strong; that he was only using 300 milliwatts and did not think that he "could talk over anyone and therefore wasn't interfering with anyone"; and that the interference would not happen again.

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.⁵ 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.⁶ 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,⁷ and the Commission has so interpreted the term in the Section 503(b) context.⁸ The Commission may also assess a forfeiture for violations that are merely repeated, and not willful.⁹ The term "repeated" means the commission or omission of such act more than once or for more than one day.¹⁰

⁴ See 47 C.F.R. § 90.20(a). Mr. VanVolkenburg holds an amateur license (call sign KC5RF), but the license does not authorize him to operate on public safety frequencies. Moreover, Part 15 of the Commission's rules (Rules) sets out the conditions and technical requirements under which certain radio transmission devices may be used without a license. In relevant part, Section 15.209 of the Rules provides that non-licensed transmissions in the 216-960 MHz band is permitted only if the field strength of the transmission does not exceed 200 µV/m at three meters. 47 C.F.R. § 15.209. Agents from the Tampa Office observed the transmissions on 465.300 MHz at a distance of approximately 2 miles from Mr. VanVolkenburg's residence. Given the distance from the source, the agents determined that the transmissions' field strength exceeded allowable Part 15 levels.

⁵ 47 U.S.C. § 503(b).

⁶ 47 U.S.C. § 312(f)(1).

⁷ 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").

⁸ See, e.g., *Application for Review of Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991), *recons. denied*, 7 FCC Rcd 3454 (1992).

⁹ 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).

¹⁰ Section 312(f)(2) of the Act, 47 U.S.C. § 312(f)(2), which also applies to violations for which forfeitures are

A. Unlicensed Radio Transmissions

6. The evidence in this case is sufficient to establish that Mr. VanVolkenburg violated Section 301 of the Act. 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.¹¹ As the record shows, on 14 different days during September and October 2012, an individual transmitted non-prison-related communications over prison communications systems on the frequency 465.300 MHz. On October 28, 2012, agents from the Tampa Office determined that an unlicensed radio transmitter was operating on the frequency 465.300 MHz from Mr. VanVolkenburg's residence in Cocoa, Florida. A review of the Commission's records revealed that no license or authorization was issued to anyone to operate a radio station on 465.300 MHz from this location. Mr. VanVolkenburg had a radio transmitter capable of operating on 465.300 MHz in his home and did not deny that he had operated the transmitter on that frequency. Moreover, agents from the Tampa Office identified Mr. VanVolkenburg's voice as matching that of the individual on the recordings and transmitting on October 28, 2012. The totality of the evidence convinces us that it was Mr. VanVolkenburg who was operating the unlicensed transmitter from his residence that was causing interference to the prison communications systems over at least a two-month period. Because Mr. VanVolkenburg consciously operated the station and did so on more than one day, the apparent violations of the Act were both willful and repeated. We therefore conclude, based on the evidence before us, that Mr. VanVolkenburg apparently willfully and repeatedly violated Section 301 of the Act by operating radio transmission equipment without the required Commission authorization.

B. Interference with Licensed Communications

7. The evidence in this case is also sufficient to establish that Mr. VanVolkenburg violated Section 333 of the Act. Section 333 of the Act states that "[n]o person shall willfully or maliciously interfere with or cause interference to any radio communications of any station licensed or authorized by or under this Act or operated by the United States Government."¹² The legislative history for Section 333 of the Act identifies willful and malicious interference as "intentional jamming, deliberate transmission on top of the transmissions of authorized users already using specific frequencies in order to obstruct their communications, repeated interruptions, and the use and transmission of whistles, tapes, records, or other types of noisemaking devices to interfere with the communications or radio signals of other stations." As the record shows, on 14 different days during September and October 2012, Mr. VanVolkenburg interfered with licensed communications of the Brevard County Sheriff's Department. On six days, the Sheriff's Department informed Mr. VanVolkenburg that he was interfering with licensed prison communications and directed him to cease. Mr. VanVolkenburg, however, continued to transmit an interfering signal on 465.300 MHz and also issued threats against the officers. Because Mr. VanVolkenburg consciously operated the station on more than one day and was aware that his operations were interfering with another user, the apparent violations of the Act were both willful and repeated. We therefore conclude, based on the evidence before us, that Mr. VanVolkenburg apparently willfully and repeatedly violated Section 333 of the Act by willfully and maliciously interfering with licensed communications of the Sheriff's Department.

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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.

¹¹ 47 U.S.C. § 301.

¹² 47 U.S.C. § 333.

C. Proposed Forfeiture Amount

8. Pursuant to the Commission's *Forfeiture Policy Statement* and Section 1.80 of the Rules, the base forfeiture amount for operation without an instrument of authorization is \$10,000, and the base forfeiture amount for interference is \$7,000.¹³ 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 We find Mr. VanVolkenburg's misconduct particularly egregious because his unlicensed operation involved willful and malicious interference to the communications of the Brevard County Sheriff's Department, which included threats against the officers, after being told (multiple times) to cease his interfering communications. Thus, we find that an upward adjustment of \$8,000 to the combined base forfeiture of \$17,000 is warranted.¹⁵ Applying the *Forfeiture Policy Statement*, Section 1.80 of the Rules, and the statutory factors to the instant case, we conclude that Mr. VanVolkenburg is apparently liable for a forfeiture in the amount of \$25,000.

IV. ORDERING CLAUSES

9. 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, Terry L. VanVolkenburg is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of twenty five thousand dollars (\$25,000) for violations of Sections 301 and 333 of the Act.¹⁶

10. **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, Terry L. VanVolkenburg **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

11. 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. VanVolkenburg shall also send electronic notification on the date said payment is made to SCR-Response@fcc.gov. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted.¹⁷ 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

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

¹⁴ 47 U.S.C. § 503(b)(2)(E).

¹⁵ *See, e.g., Estevan J. Gutierrez*, Notice of Apparent Liability for Forfeiture, 26 FCC Rcd 12542 (Enf. Bur. 2011) (imposing \$8,000 upward adjustment to \$17,000 base forfeiture amount because unlicensed operations interfered with public safety communications and threatened harm to officers and their families).

¹⁶ 47 U.S.C. §§ 301, 333, 503(b); 47 C.F.R. §§ 0.111, 0.204, 0.311, 0.314, 1.80.

¹⁷ An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

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.

12. 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. 20554.¹⁸ 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.

13. 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.¹⁹ Mail the written statement to Federal Communications Commission, Enforcement Bureau, South Central Region, Tampa Office, 4010 W. Boy Scout Blvd, Suite 425, Tampa, FL 33607-5744, and include the NAL/Acct. No. referenced in the caption. Terry L. VanVolkenburg also shall e-mail the written response to SCR-Response@fcc.gov.

14. 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.

¹⁸ See 47 C.F.R. § 1.1914.

¹⁹ 47 C.F.R. §§ 1.16, 1.80(f)(3).

15. **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 Terry L. VanVolkenburg at his address of record.

FEDERAL COMMUNICATIONS COMMISSION

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