

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

In the Matter of)	
)	
Tommie Salter)	File Number: EB-FIELDSCR-14-00014625
)	NAL/Acct. No.: 201432700005
Jacksonville, Florida)	FRN: 0011485604

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: August 22, 2014

Released: August 22, 2014

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

I. INTRODUCTION

1. We propose a penalty of \$14,000 against Tommie Salter for apparently refusing to allow an inspection of his Citizen Band (CB) radio station by Commission agents. The Commission's ability to conduct unannounced inspections to assess compliance with its rules is essential to our responsibility to promote safety of life and property through the use of wire and radio communication. Mr. Salter apparently refused to permit inspection despite being warned both previously in writing and verbally at the time of the inspection that such refusal was illegal. We find Mr. Salter's actions demonstrate a deliberate disregard for the Commission's authority and its rules, warranting a significantly increased penalty.

2. In this Notice of Apparent Liability for Forfeiture (NAL), we find that Mr. Salter apparently willfully 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

II. BACKGROUND

3. Mr. Salter has a history of causing interference to his neighbor's home electronic equipment. On March 17, 2004, the Enforcement Bureau's Tampa Office (Tampa Office) issued Mr. Salter a Notice of Violation for failing to allow an agent inspection of his CB station in response to interference complaints.³ Following further interference complaints, the Tampa Office restricted Mr. Salter's hours of CB operation three times from 2004 to 2006.⁴ In addition, Mr. Salter was assessed a forfeiture in 2004 for operating a non-certificated CB transmitter during his restricted hours.⁵

4. On March 21, 2014, in response to a new complaint of interference to a neighbor's home electronic equipment, agents from the Tampa Office monitored radio transmissions on CB frequency 27.245

¹ 47 U.S.C. § 303(n).

² 47 C.F.R. § 95.426(a).

³ *Tommie Salter*, Notice of Violation, V20043270005 (Enf. Bur. Mar. 17, 2004) (on file in EB-FIELDSCR-14-00014625).

⁴ Letter to Tommie Salter from Ralph Barlow, District Director, Tampa Office, South Central Region, Enforcement Bureau (Mar. 18, 2004) (restricting Mr. Salter from operating his CB station between 6 a.m. and 11:59 p.m.) (on file in EB-FIELDSCR-14-00014625); Letter to Tommie Salter from Ralph Barlow, District Director, Tampa Office, South Central Region, Enforcement Bureau (July 15, 2004) (same) (on file in EB-FIELDSCR-14-00014625); Letter to Tommie Salter from Ralph Barlow, District Director, Tampa Office, South Central Region, Enforcement Bureau (Mar. 16, 2006) (same) (on file in EB-FIELDSCR-14-00014625).

⁵ *Tommie Salter*, Forfeiture Order, 19 FCC Rcd 24746 (Enf. Bur. 2004), *aff'd*, Memorandum Opinion and Order, 20 FCC Rcd 3616 (Enf. Bur. 2005) (reducing forfeiture based on inability to pay) (forfeiture paid).

MHz and used radio direction finding techniques to locate the source of the signals to Mr. Salter's residence in Jacksonville, Florida. The agents immediately knocked on Mr. Salter's front door and identified themselves to him as Commission agents. The agents told Mr. Salter about the radio interference complaint from a neighbor and asked if they could inspect his CB radio station. Mr. Salter denied the agents' request to inspect his CB radio station. The agents verbally warned Mr. Salter that refusing to allow an inspection of his CB radio station violated the Act and the Rules and could result in a forfeiture action, but he again denied the request.

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.⁶ 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.⁷ 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,⁸ and the Commission has so interpreted the term in the Section 503(b) context.⁹

A. Failure to Allow Inspection

6. We find that the record evidence in this case is sufficient to establish that Mr. Salter 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. . . ."¹⁰ Section 95.426(a) of the Rules requires CB operators to make their stations and records available for inspection by authorized Commission representatives.¹¹ On March 21, 2014, while attempting to resolve an interference complaint, agents from the Tampa Office located the source of signals on 27.245 MHz to Mr. Salter's residence and requested to inspect his CB station. Mr. Salter denied the request, despite being told by the agents that such refusal violated the Act and the Rules and could subject him to forfeiture action.¹² Based on the record evidence, we find that Mr. Salter apparently willfully violated Section 303(n) of the Act and Section 95.426(a) of the Rules by failing to permit inspection of his CB radio station.

⁶ 47 U.S.C. § 503(b).

⁷ 47 U.S.C. § 312(f)(1).

⁸ 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.").

⁹ 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).

¹⁰ 47 U.S.C. § 303(n).

¹¹ 47 C.F.R. § 95.426(a).

¹² Although Mr. Salter did not ask if the agents had a warrant, we note that agents are not required to obtain a search warrant prior to requesting to inspect a radio or CB station. See, e.g., *Vicot Cherry*, Forfeiture Order, 28 FCC Rcd 16065 (Enf. Bur. 2013) (search warrant not required to search unlicensed radio station); *Norfolk S. Ry. Co.*, Order, 11 FCC Rcd 519 (CIB 1996) ("The right to inspect a station is one of the cornerstones of the FCC's ability to ensure compliance with the Communications Act and the FCC regulations."); *Randall R. Gaines*, Revocation Order, 72 FCC 2d 871 (Rev. Bd. 1979) (search warrant is not required for an inspection of a CB radio station).

B. Proposed Forfeiture

7. Pursuant to the Commission's *Forfeiture Policy Statement* and Section 1.80 of the Rules, the base forfeiture amount for failure to permit inspection 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 In doing so, we find that the violation here warrants a \$7,000 upward adjustment from the base forfeiture amount.¹⁵ As the record reflects, Mr. Salter previously received a Notice of Violation for failing to allow an agent inspection of his CB station¹⁶ and a forfeiture for operating his CB station with a non-certificated transmitter during restricted hours.¹⁷ Nevertheless, on March 21, 2014, Mr. Salter again refused to permit an inspection of his CB station, despite being warned verbally at the time that such refusal violates the Act and Rules. 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. Applying the *Forfeiture Policy Statement*, Section 1.80 of the Rules, and the statutory factors to the instant case, we conclude that Mr. Salter is apparently liable for a forfeiture in the amount of \$14,000.

IV. ORDERING CLAUSES

8. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Act, and Sections 0.111, 0.204, 0.311, 0.314, and 1.80 of the Rules, Tommie Salter is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of fourteen thousand dollars (\$14,000) for violations of Section 303(n) of the Act and Section 95.426(a) of the Rules.¹⁸

9. **IT IS FURTHER ORDERED** that, pursuant to Section 1.80 of the Rules, within thirty (30) calendar days of the release date of this Notice of Apparent Liability for Forfeiture, Tommie Salter **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. Tommie Salter 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.¹⁹ When

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 *Nathaniel Johnson*, Notice of Apparent Liability for Forfeiture and Order, 28 FCC Rcd 7034 (Enf. Bur. 2013) (upwardly adjusting forfeiture by \$7,000 for repeated failure to allow inspection of CB station following multiple warnings), *aff'd*, Forfeiture Order, 29 FCC Rcd 2703 (Enf. Bur. 2014). Cf. *DTV LLC*, Notice of Apparent Liability for Forfeiture, 29 FCC Rcd 5483 (2014) (proposing the statutory maximum forfeiture for each of two refusals to allow an inspection of a television station) (*DTV*). Mr. Salter's apparent violations differ from the misconduct at issue in *DTV* because: (1) Mr. Salter is an individual CB operator, rather than an experienced Class A television licensee who owns multiple broadcast stations; and (2) Mr. Salter's refusals to allow inspections were separated by over ten years, whereas the apparent refusals in *DTV* occurred within two weeks. As a result, we decline to propose the statutory maximum forfeiture applicable to Mr. Salter's apparent violations.

¹⁶ See *supra* note 3.

¹⁷ See *supra* note 5.

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

¹⁹ An FCC Form 159 and detailed instructions for completing the form may be obtained at

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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. 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.

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 1.16 and 1.80(f)(3) of the Rules.²⁰ Mail the written statement to Federal Communications Commission, Enforcement Bureau, South Central Region, Tampa Office, 4010 W. Boy Scout Blvd., Tampa, Florida, 33607, and include the NAL/Acct. No. referenced in the caption. Tommie Salter also shall e-mail the written response to SCR-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 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.

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<http://www.fcc.gov/Forms/Form159/159.pdf>.

²⁰ 47 C.F.R. §§ 1.16, 1.80(f)(3).

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 Tommie Salter at his address of record.

FEDERAL COMMUNICATIONS COMMISSION

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