

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

In the Matter of)	
)	
James Engle)	File No.: EB-FIELDNER-13-00011917
Lewiston, New York)	NAL/Acct. No.: 201432400011
)	FRN: 0023900285

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: August 28, 2014

Released: August 28, 2014

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

I. INTRODUCTION

1. We propose a penalty of \$22,000 against James Engle for apparently operating a radio transmitter without the requisite Commission authorization and intentionally causing interference to other users of the Citizens Band (CB) radio service. The CB radio rules are designed to foster cooperation among users in order to make the most efficient use of the CB band and reduce the potential for interference. CB station operators must not use radio frequency amplifiers to raise the power of their transmitters without authorization. In addition, deliberate interference undermines the utility of the CB radio service by preventing communications among users that comply with the CB radio rules. Mr. Engle was warned repeatedly in writing by the Enforcement Bureau that his actions violated the law, and his apparent disregard for the Commission's authority warrants an increased penalty.

2. In this Notice of Apparent Liability for Forfeiture (NAL), we find that James Engle apparently willfully violated Sections 301 and 333 of the Communications Act of 1934, as amended (Act), and Sections 95.411(a) and 95.413(a) of the Commission's rules (Rules), by operating a radio transmitter without authorization and intentionally interfering with CB communications.¹

II. BACKGROUND

3. On October 23, 2013, in response to a complaint of intentional interference from a CB operator on frequency 27.325 MHz, agents from the Enforcement Bureau's Philadelphia Office (Philadelphia Office) used mobile direction finding techniques to identify Mr. Engle's residence as the source of the transmissions. The agents monitored the transmissions emanating from Mr. Engle's station for several hours that night and heard him repeatedly interrupt ongoing transmissions of another CB operator by transmitting over the other signal while saying "oops slam."

4. On October 24, 2013, agents from the Philadelphia Office inspected Mr. Engle's CB station and discovered two radio frequency (RF) linear amplifiers. In response to questions from the agents, Mr. Engle admitted that he used one of the power amplifiers on the night of October 23, 2013. During the inspection, the agents tested the amplifier on the highest power setting with Mr. Engle's CB transmitter and measured 148 Watts output power. Prior to the inspection, Mr. Engle had received two written warnings from the Enforcement Bureau advising him that operating a linear amplifier with his CB

¹ 47 U.S.C. §§ 301, 333; 47 C.F.R. §§ 95.411(a), 95.413(a).

transmitter voided his authority to operate his station and that causing intentional interference to other CB communications violated the Act and Rules.²

III. DISCUSSION

5. Section 503(b) of the Act provides that any person who willfully fails to comply substantially with the terms and conditions of any license, or willfully 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.³ 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.⁴ 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,⁵ and the Commission has so interpreted the term in the Section 503(b) context.⁶

A. Unlicensed CB Operations

6. We find that the evidence in this case is sufficient to establish that Mr. Engle violated Section 301 of the Act and Section 95.411(a) of the Rules. 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.⁷ Section 95.404 of the Rules states that CB operators are not required to have individual licenses, provided that they operate their stations in accordance with Subpart D of Part 95 of the Rules (CB Rules).⁸ Operation of CB stations in a manner that is inconsistent with the CB Rules requires a license pursuant to Section 301 of the Act.⁹ Section 95.411(a) of the Rules states that CB operators may not attach external RF power amplifiers (sometimes called “linears” or “linear amplifiers”) to certificated CB transmitters in any way.¹⁰ Section 95.411(b) of the Rules states that there are no exceptions to this rule and that use of a RF power amplifier voids the authority to operate the station.¹¹ The Commission will presume an individual has used a linear or other external RF power amplifier if the amplifier is located on the individual’s premises and if there is other evidence showing that a CB station was operated with more power than allowed by the Rules.¹²

² Letter to James Engle from Laura Smith, Esq., Special Counsel, Enforcement Bureau (Feb. 15, 2013) (on file in EB-FIELDNER-13-00011917); Letter to James Engle from David C. Dombrowski, District Director, Philadelphia Office, Northeast Region, Enforcement Bureau (Apr. 1, 2013) (on file in EB-FIELDNER-13-00011917).

³ 47 U.S.C. § 503(b).

⁴ 47 U.S.C. § 312(f)(1).

⁵ 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.”).

⁶ 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).

⁷ 47 U.S.C. § 301.

⁸ 47 C.F.R. § 95.404.

⁹ 47 U.S.C. § 301.

¹⁰ 47 C.F.R. § 95.411(a).

¹¹ 47 C.F.R. § 95.411(b).

¹² 47 C.F.R. § 95.411(c).

7. On October 24, 2013, agents from the Philadelphia Office observed two linear amplifiers in Mr. Engle's residence. Mr. Engle admitted to using one of the power amplifiers while operating his CB station the previous night. Even without Mr. Engle's admission, however, we presume that Mr. Engle operated his CB station with the linear amplifier because the amplifier was located on his premises and capable of operating with more power than allowed by the Rules.¹³ Based on the evidence before us, we find that Mr. Engle apparently voided his authority to operate in the CB band and willfully violated Section 301 of the Act and Section 95.411(a) of the Rules.

B. Intentional Interference to CB Communications

8. The evidence in this case is also sufficient to establish that Mr. Engle violated Section 333 of the Act and Section 95.413(a) of the Rules. Section 333 of the Act prohibits any person from willfully or maliciously interfering with or causing interference to any radio communications of any licensed or authorized station.¹⁴ Similarly, Section 95.413(a) of the Rules states that CB radio operators shall not "interfere intentionally with the communications of another CB station."¹⁵ On October 23, 2013, agents from the Philadelphia Office heard Mr. Engle repeatedly interrupt CB communications on 27.325 MHz and intentionally interfere with the ongoing transmissions of another CB operator. Based on the evidence before us, we find that Mr. Engle apparently willfully violated Section 333 of the Act and Section 95.413(a) of the Rules.

C. Proposed Forfeiture

9. Pursuant to the Commission's *Forfeiture Policy Statement* and Section 1.80 of the Rules, the base forfeiture amount for operations without an instrument of authorization for the service is \$10,000 and the base forfeiture amount for interference to radio communications is \$7,000.¹⁶ 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.¹⁷ Prior to October 23, 2013, Mr. Engle had received two written warnings from the Enforcement Bureau advising him that operating a linear amplifier with his CB transmitter voided his authority to operate his station and that causing intentional interference to CB communications violated the Act and Rules.¹⁸ The fact that Mr. Engle operated with a linear amplifier to cause intentional interference to other CB operators despite being warned twice in writing demonstrates a deliberate disregard for the Commission's requirements and authority. Thus, we find that an upward adjustment in the forfeiture amount of \$5,000 is warranted.¹⁹ Applying the *Forfeiture Policy Statement*,

¹³ *Id.* Section 95.410 of the Rules requires that a CB station's transmitting power output must not exceed 4 Watts in AM mode and 12 Watts in Single SideBand mode. 47 C.F.R. § 95.410. As stated above, tests conducted on Mr. Engle's amplifier measured 148 Watts output power. *See supra* para. 4.

¹⁴ 47 U.S.C. § 333.

¹⁵ 47 C.F.R. § 95.413(a).

¹⁶ *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.

¹⁷ 47 U.S.C. § 503(b)(2)(E).

¹⁸ *See supra* note 2.

¹⁹ *See, e.g., Orloff Haines*, Notice of Apparent Liability for Forfeiture, 29 FCC Rcd 2903 (Enf. Bur. 2014) (upwardly adjusted proposed forfeiture by \$5,000 because violator caused intentional interference to other CB radio operators after being warned twice in writing that such action violated the Act and Rules); *Carlton Lewis*, Notice of Apparent Liability for Forfeiture, 28 FCC Rcd 15975 (Enf. Bur. 2014) (upwardly adjusted proposed forfeiture by

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Section 1.80 of the Rules, and the statutory factors to the instant case, we conclude that Mr. Engle is apparently liable for a total forfeiture in the amount of \$22,000 for operating a radio transmitter without the requisite Commission authorization and intentionally causing interference to CB communications.

IV. ORDERING CLAUSES

10. 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, James Engle is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of twenty two thousand dollars (\$22,000) for violations of Sections 301 and 333 of the Act and Sections 95.411(a) and 95.413(a) of the Rules.²⁰

11. **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, James Engle **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.²¹

12. 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. James Engle 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.²² 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.

13. 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

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\$5,000 because violator operated CB station with a linear amplifier after being warned twice in writing that such action violated the Act and Rules).

²⁰ 47 U.S.C. §§ 301, 333, 503(b); 47 C.F.R. §§ 0.111, 0.204, 0.311, 0.314, 1.80, 95.411(a), 95.413(a).

²¹ 47 C.F.R. § 1.80.

²² An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

Street, S.W., Room 1-A625, Washington, D.C. 20554.²³ 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.

14. 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.²⁴ Mail the written statement to Federal Communications Commission, Enforcement Bureau, Northeast Region, Philadelphia Office, One Oxford Valley Building Suite 404, 2300 East Lincoln Highway, Langhorne, PA 19047 and include the NAL/Acct. No. referenced in the caption. James Engle also shall e-mail the written response to NER-Response@fcc.gov.

15. 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.

16. **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 James Engle at his address of record.

FEDERAL COMMUNICATIONS COMMISSION

David C. Dombrowski
District Director
Philadelphia Office
Northeast Region
Enforcement Bureau

²³ See 47 C.F.R. § 1.1914.

²⁴ 47 C.F.R. §§ 1.16, 1.80(f)(3).