

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

In the Matter of)	
)	
Brian R. Ragan)	File No.: EB-FIELDWR-12-00000609
)	NAL/Acct. No.: 201232960001
Licensee of Amateur Radio Station KF6EI)	FRN: 0014517353
Suisun City, California)	

FORFEITURE ORDER

Adopted: March 10, 2014

Released: March 10, 2014

By the Regional Director, Western Region, Enforcement Bureau:

I. INTRODUCTION

1. In this Forfeiture Order (Order), we issue a monetary forfeiture in the amount of thirteen thousand, six hundred dollars (\$13,600) to Brian R. Ragan, Licensee of Amateur Radio Station KF6EGI in Suisun City, California, for willfully and repeatedly violating Section 301 of the Communications Act of 1934, as amended (Act),¹ and for willfully violating Section 303(n) of the Act.² The noted violation involved Mr. Ragan's operation of an unlicensed radio transmitter on frequency 104.9 MHz, and his failure to allow an inspection of his station by FCC personnel.

II. BACKGROUND

2. On July 2, 2012, the Enforcement Bureau's San Francisco Office (San Francisco Office) issued a Notice of Apparent Liability for Forfeiture and Order (NAL) for seventeen thousand dollars (\$17,000) to Mr. Ragan for operating an unlicensed radio station on frequency 104.9 MHz, and for failing to allow FCC personnel to inspect his station.³ In response to the NAL, Mr. Ragan does not deny the violations, but requests a forfeiture reduction because he had no malicious intent in his operation, and because the proposed forfeiture is a harsh penalty for someone who immediately complied with a Notice of Unlicensed Operation.⁴

III. DISCUSSION

3. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Act,⁵ Section 1.80 of the Commission's rules (Rules),⁶ and the *Forfeiture Policy Statement*.⁷

¹ 47 U.S.C. § 301.

² 47 U.S.C. § 303(n).

³ *Brian R. Ragan*, Notice of Apparent Liability for Forfeiture and Order, 27 FCC Rcd 7331 (Enf. Bur. 2012) (NAL). A comprehensive recitation of the facts and history of this case can be found in the NAL and is incorporated herein by reference.

⁴ See Response of Brian R. Ragan to San Francisco Office, Western Region, Enforcement Bureau (Jul. 9, 2012) (on file in EB-FIELDWR-12-00000609) (NAL Response).

⁵ 47 U.S.C. § 503(b).

⁶ 47 C.F.R. § 1.80.

In examining Mr. Ragan's response, Section 503(b)(2)(E) of the Act requires that the Commission take into account the nature, circumstances, extent, and gravity of the violation 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.⁸

4. We affirm the *NAL*'s finding that Mr. Ragan violated Sections 301 and 303(n) of the Act.⁹ 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.¹⁰ Section 303(n) of the Act states that agents of the FCC have authority to inspect all radio installations associated with stations required to be licensed or authorized by the Act.¹¹

5. As reflected in the *NAL*, on February 4 and February 25, 2012, Mr. Ragan operated an unlicensed radio station on frequency 104.9 MHz from his residence.¹² Mr. Ragan admitted to operating the unlicensed radio station to a San Francisco agent and acknowledged that the operation had been ongoing for six months.¹³ A review of the Commission's records revealed that Mr. Ragan did not have a license to operate a radio station on frequency 104.9 MHz at that location. On February 25, 2012, Mr. Ragan refused to make his radio station available to a Commission agent for inspection.¹⁴ On February 27, 2012, Mr. Ragan acknowledged to a San Francisco agent that he was aware that the FCC was requesting an inspection, but chose not to respond to the request.¹⁵ Mr. Ragan possesses an FCC amateur radio license (KF6EGI), a Technician Class, and has been licensed by the FCC since 2006. Mr. Ragan, as a licensed amateur radio operator for at least six years, should be aware that any radio equipment at his station must be made available for inspection at any time when requested by the FCC,¹⁶ and also should be aware of the proper operation of his amateur station in accordance with the Rules.¹⁷ Based on the evidence before us, we find that Mr. Ragan willfully and repeatedly violated Section 301 of the Act by operating an unlicensed radio station on frequency 104.9 MHz, and willfully violated Section 303(n) of the Act by failing to make his station available for inspection by FCC personnel.¹⁸

6. In response to the *NAL*, Mr. Ragan requests reduction of the \$17,000 forfeiture, first arguing that he had no malicious intent in his operation. Under the applicable statute, the Commission need not demonstrate an intent to violate a rule to make a finding that a licensee engaged in willful

⁷ *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), *recons. denied*, 15 FCC Rcd 303 (1999) (*Forfeiture Policy Statement*).

⁸ 47 U.S.C. § 503(b)(2)(E).

⁹ See *NAL*, *supra* note 3.

¹⁰ 47 U.S.C. § 301.

¹¹ 47 U.S.C. § 303(n).

¹² *NAL*, 27 FCC Rcd at 7331, para. 2.

¹³ *Id.* at 7332, para. 3.

¹⁴ *Id.* at 7331, para. 2.

¹⁵ *Id.* at 7332, para. 3.

¹⁶ See 47 C.F.R. § 97.103(c).

¹⁷ See 47 C.F.R. § 97.103(a).

¹⁸ As required by the *NAL*, Mr. Ragan submitted a written statement, stating that he is now in full compliance with Section 301 and is no longer engaged in unauthorized operation on frequency 104.9 MHz and that he is willing to allow an inspection for verification. See Statement of Brian R. Ragan, to San Francisco Office, Western Region, Enforcement Bureau (Jul. 9, 2012) (on file in EB-FIELDWR-12-00000609).

misconduct. As stated in the *NAL*, Section 312(f)(1) of the Act,¹⁹ which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that “[a]s 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.”²⁰ As the facts are undisputed that Mr. Ragan operated the station on frequency 104.9 MHz on the dates in question without Commission authorization, we find that his violation of Section 301 of the Act was therefore willful according to Commission precedent.

7. Mr. Ragan also argues that the proposed forfeiture is a harsh penalty for someone who immediately complied with a Notice of Unlicensed Operation.²¹ The proposed penalty is consistent with those assessed against other operators who engaged in unlicensed operations and failed to allow inspection by FCC agents.²² As a licensed amateur radio operator, Mr. Ragan is expected to comply with the Rules. While Mr. Ragan did comply with the Notice of Unlicensed Operation when it was issued by ceasing his illegal operation, the Commission is under no requirement to wait until he violates the Act again before proposing a forfeiture against him.²³ However, although the proposed forfeiture is not nullified because of Mr. Ragan’s corrective action, it may be reduced in response to his history of compliance as an amateur licensee.²⁴ Prior to this violation, Mr. Ragan had no violations of the Act or the Rules as an amateur radio operator and, therefore, consistent with the adjustment factors,²⁵ we find that reduction of the forfeiture based on Mr. Ragan’s history of compliance is warranted and reduce the forfeiture by \$3,400. Therefore, after consideration of the entire record and the factors listed above, we find that a forfeiture in the amount of \$13,600 is warranted.

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, 0.311, 0.314, and 1.80(f)(4) of the Commission’s rules, Brian R. Ragan **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of thirteen thousand, six hundred dollars (\$13,600) for violations of Sections 301 and 303(n) of the Act.²⁶

¹⁹ 47 U.S.C. § 312(f)(1).

²⁰ *NAL*, 27 FCC Rcd at 7335, para. 4 n.7 (quoting H.R. Rep. 97-765, 97th Cong. 2d Sess. 51 (1982)).

²¹ *NAL Response* at 1.

²² See *Charles Clemons*, Forfeiture Order, 23 FCC Rcd 7414 (Enf. Bur. 2008) (\$17,000 forfeiture assessed for unlicensed broadcaster who also failed to allow inspection, in violation of Sections 301 and 303(n) of the Act); *Craig Watkins*, Forfeiture Order, 23 FCC Rcd 3924 (Enf. Bur. 2008) (\$17,000 forfeiture assessed for unlicensed broadcaster who also failed to allow inspection, in violation of Sections 301 and 303(n) of the Act); *Nicholas Paula*, Forfeiture Order, 23 FCC Rcd 409 (Enf. Bur. 2008) (\$17,000 forfeiture assessed for unlicensed broadcaster who also failed to allow inspection, in violation of Sections 301 and 303(n) of the Act).

²³ See *Seawest Yacht Brokers*, 9 FCC Rcd 6099, 6099, para. 7 (1994) (corrective action taken to come into compliance with Commission rules or policy is expected, and does not nullify or mitigate any prior forfeitures or violations).

²⁴ See *id.* at 6099, para. 8 (forfeiture proposed for a violation of Section 301 of the Act, while not nullified because of corrective action taken to come into compliance, may be reduced because of subject’s prior history of compliance as a licensee); see also *Joaquim Barbosa*, Forfeiture Order, 27 FCC Rcd 15334 (Enf. Bur. 2012) (history of compliance reduction given to amateur radio licensee who had no history of violations prior to operating without authorization on a frequency not in the amateur radio service).

²⁵ 47 C.F.R. § 1.80(b)(5), Note: Guidelines for Assessing Forfeitures, Section II, Adjustment Criteria for Section 503 Forfeitures (for forfeitures proposed and assessed under Section 503(b) of the Act, as this one is, the adjustment factors included by the Commission in its downward adjustment criteria in Section 1.80 are: (1) minor violation; (2) good faith or voluntary disclosure; (3) history of compliance; and (4) inability to pay).

²⁶ 47 U.S.C. §§ 301, 303(n), 503(b); 47 C.F.R. §§ 0.111, 0.204, 0.311, 0.314, 1.80(f)(4).

9. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within thirty (30) calendar days after the release date of this Forfeiture Order.²⁷ If the forfeiture is not paid within the period specified, the case may be referred to the U.S. Department of Justice for enforcement of the forfeiture pursuant to Section 504(a) of the Act.²⁸ Brian R. Ragan shall send electronic notification of payment to WR-Response@fcc.gov on the date said payment is made. The payment must be made by check or similar instrument, wire transfer, or credit card, and must include the NAL/Account number and FRN referenced above. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted.²⁹ 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.

10. Any request for 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. 20554.³⁰ 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.

11. IT IS FURTHER ORDERED that a copy of this Order shall be sent by both First Class and Certified Mail, Return Receipt Requested, to Brian R. Ragan at his address of record.

FEDERAL COMMUNICATIONS COMMISSION

Rebecca L. Dorch
Regional Director, Western Region
Enforcement Bureau

²⁷ 47 C.F.R. § 1.80.

²⁸ 47 U.S.C. § 504(a).

²⁹ An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

³⁰ See 47 C.F.R. § 1.1914.