

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

In the Matter of)
Orloff Haines) File No.: EB-FIELDSCR-13-00008788
Enid, Oklahoma) NAL/Acct. No.: 201432500005
) FRN: 0020321642
)

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: March 21, 2014

Released: March 21, 2014

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

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture (*NAL*), we find that Orloff Haines apparently willfully violated Section 333 of the Communications Act of 1934, as amended (Act), and Section 95.413(a)(3) of the Commission's rules (Rules),¹ by operating a Citizens Band (CB) radio transmitter to interfere with the communications of other CB stations. We conclude that Mr. Haines is apparently liable for a forfeiture in the amount of twelve thousand dollars (\$12,000).

II. BACKGROUND

2. On May 14, 2013, an agent of the Enforcement Bureau's Dallas Office (Dallas Office), using mobile direction finding techniques, positively identified the source of a continuous carrier on CB Channel 19 (27.1850 MHz) to Mr. Haines's residence in Enid, Oklahoma. The agent identified himself and requested to inspect the CB station located in the residence. Mr. Haines was not present, but Mrs. Haines showed the agent Mr. Haines's CB station, which was transmitting on Channel 19. Mrs. Haines stated that Mr. Haines was "keyed on," or continuously transmitting on Channel 19, because other CB operators in the area were harassing her. The agent telephoned Mr. Haines during the inspection and Mr. Haines admitted that he was "keyed on" Channel 19 to prevent other CB operators in the area from harassing his wife. At the conclusion of the inspection, Mrs. Haines voluntarily turned off Mr. Haines' CB transmitter, resolving the interference on Channel 19.

III. DISCUSSION

3. 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.² 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.³ The legislative history to Section 312(f)(1) of the Act clarifies that this definition of willful applies to both

¹ 47 U.S.C. § 333; 47 C.F.R. § 95.413(a)(3).

² 47 U.S.C. § 503(b).

³ 47 U.S.C. § 312(f)(1).

Sections 312 and 503(b) of the Act,⁴ and the Commission has so interpreted the term in the Section 503(b) context.⁵

A. Intentional Interference to CB Communications

4. The evidence in this case is sufficient to establish that Mr. Haines violated Section 333 of the Act and Section 95.413(a)(3) 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 station.⁶ Section 95.413(a)(3) of the Rules states that CB radio operators shall not “interfere intentionally with the communications of another CB station.”⁷ On May 14, 2013, an agent from the Dallas Office observed that Mr. Haines’s CB station was transmitting a continuous carrier on CB Channel 19, which prevented communications by any other CB station on Channel 19 within approximately two miles of Mr. Haines’s residence.⁸ Mr. Haines admitted that he was transmitting a continuous carrier on CB Channel 19 to prevent other CB operators from harassing his wife. Based on the evidence before us, we find that Mr. Haines apparently willfully violated Section 333 of the Act and Section 95.413(a)(3) of the Rules by intentionally interfering with other CB station communications.

B. Proposed Forfeiture

5. Pursuant to the Commission’s *Forfeiture Policy Statement* and Section 1.80 of the Rules, the base forfeiture amount for interference to radio communications is \$7,000.⁹ 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.¹⁰ Prior to May 14, 2013, Mr. Haines received two written warnings from the Dallas Office advising him that intentionally interfering with other CB operators violated the Act and Rules.¹¹ The fact that Mr. Haines interfered with other CB communications despite being twice warned in writing that such actions violated the Act and Rules 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

⁴ 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.”).

⁵ 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).

⁶ 47 U.S.C. § 333.

⁷ 47 C.F.R. § 95.413(a)(3).

⁸ While the agent from the Dallas Office heard the continuous carrier approximately two miles from Mr. Haines’s residence, the range of Mr. Haines’s CB station may have exceeded two miles.

⁹ *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.

¹⁰ 47 U.S.C. § 503(b)(2)(E).

¹¹ Letter to Orloff Haines from James D. Wells, District Director, Dallas Office, South Central Region, Enforcement Bureau (July 6, 2010) (on file in EB-FIELDSCR-13-00008788); Letter to Orloff Haines from James D. Wells, District Director, Dallas Office, South Central Region, Enforcement Bureau (Apr. 1, 2011) (on file in EB-FIELDSCR-13-00008788). Mr. Haines responded to the 2010 warning in writing and stated that he was intentionally interfering with other CB radio operators to prevent them from harassing his wife. Letter from Orloff Haines to the Dallas Office (July 18, 2010) (on file on EB-FIELDSCR-13-00008788). Mr. Haines also responded via telephone to the 2011 warning again stating that he was intentionally interfering with other CB radio operators to prevent them from harassing his wife.

is warranted.¹² Applying the *Forfeiture Policy Statement*, Section 1.80 of the Rules, and the statutory factors to the instant case, we conclude that Mr. Haines is apparently liable for a total forfeiture in the amount of twelve thousand dollars (\$12,000) for intentionally interfering with other CB radio communications.

IV. ORDERING CLAUSES

6. 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, Orloff Haines is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of twelve thousand dollars (\$12,000) for violations of Section 333 of the Act and Section 95.413(a)(3) of the Rules.¹³

7. **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, Orloff Haines **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

8. 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. Haines 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.¹⁴ 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.

9. 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

¹² See Carlton Lewis, Notice of Apparent Liability for Forfeiture, 28 FCC Rcd 15975 (Enf. Bur. 2013) (upwardly adjusted proposed forfeiture by \$5,000 because violator operated CB station with linear amplifier after receipt of two written warnings); John Hays, Notice of Apparent Liability for Forfeiture, 26 FCC Rcd 7919 (Enf. Bur. 2011) (upwardly adjusted proposed forfeiture by \$5,000 because violator operated CB station with a linear amplifier after being warned orally and in writing that such action violated the Act and Rules).

¹³ 47 U.S.C. §§ 333, 503(b); 47 C.F.R. §§ 0.111, 0.204, 0.311, 0.314, 1.80, 95.413(a)(3).

¹⁴ 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. 20554.¹⁵ 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.

10. 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.¹⁶ Mail the written statement to Federal Communications Commission, Enforcement Bureau, South Central Region, Dallas Office, 9330 LBJ Freeway, Suite 1170, Dallas, Texas 75243, and include the NAL/Acct. No. referenced in the caption. Mr. Haines also shall e-mail the written response to SCR-Response@fcc.gov.

11. 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.

12. **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 Orloff Haines at his address of record.

FEDERAL COMMUNICATIONS COMMISSION

James D. Wells
District Director
Dallas Office
South Central Region
Enforcement Bureau

¹⁵ See 47 C.F.R. § 1.1914.

¹⁶ 47 C.F.R. §§ 1.16, 1.80(f)(3).