

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

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| In the Matter of |) | |
| |) | |
| Thomas Edward Rogers |) | File No.: EB-FIELDWR-13-00009096 |
| |) | Citation No.: C201432980003 |
| Woodinville, WA |) | |

CITATION AND ORDER

Incidental Radiator Causing Harmful Interference

Adopted: April 23, 2014

Released: April 24, 2014

By the Acting District Director, Seattle Office, Western Region, Enforcement Bureau:

I. INTRODUCTION

1. This **CITATION AND ORDER** (Citation) notifies Thomas Edward Rogers (Mr. Rogers) of his obligation to stop operating devices that are causing interference to licensed radio operations and to comply with federal rules and regulations related to radio frequency devices. This includes consumer and industrial devices such as lighting ballasts that utilize radio frequencies in their operation. Commission agents have made multiple unsuccessful attempts in writing and via phone calls to contact Mr. Rogers regarding unauthorized and unlicensed radio frequency emissions emanating from his property in Woodinville, Washington. Failure to take action to resolve the interference may result in severe penalties, including fines of up to \$16,000 per day.

2. This is an official Citation issued pursuant to Section 503(b)(5) of the Communications Act of 1934, as amended (Communications Act or Act),¹ to Mr. Rogers. Specifically, Mr. Rogers is being cited for operating incidental radiators that are causing harmful interference in violation of Section 15.5(b) of the Commission's rules (Rules).²

3. Notice of Duty to Comply With Laws: Mr. Rogers should ensure that he does not utilize the incidental radiators prior to their repair or replacement and should take steps to eliminate all harmful interference. Mr. Rogers is hereby on notice that if he subsequently engages in any conduct of the type described in this Citation, including any violation of Section 15.5(b) of the Rules, he may be subject to civil penalties, including but not limited to substantial monetary fines (forfeitures) and seizure of equipment. Such forfeitures may be based on both the conduct that led to this Citation and the conduct following it.³

¹ 47 U.S.C. § 503(b)(5).

² 47 C.F.R. § 15.5(b).

³ See 47 U.S.C § 503(b)(5). See also S. Rep. No. 95-580, 95th Cong., 1st Sess. at 9 (1977) (if a person or entity that has been issued a citation by the Commission thereafter engages in the conduct for which the citation of violation

4. **Your Response Required:** Pursuant to Sections 4(i), 4(j), and 403 of the Communications Act,⁴ we also direct Mr. Rogers to respond in writing, within thirty (30) calendar days after the release date of this Citation. The response must state that he has ceased operating the incidental radiators and describe the specific action(s) taken or planned to eliminate all harmful interference. The response must be signed under penalty of perjury.

II. BACKGROUND

5. On May 22, 2013, in response to complaints of interference to licensed Amateur Radio Service operations, an agent from the Enforcement Bureau's Seattle Office (Seattle Office) used direction finding techniques to locate the source of transmissions radiating on numerous frequencies between 7 and 8 MHz to the residence of Mr. Rogers in Woodinville, Washington. The agent used a spectrum analyzer, a hand held antenna, and the receiving equipment in his vehicle to confirm that the signals on frequencies between 7 and 8 MHz were emanating from Mr. Rogers' residence. On June 17, 2013, an RFI Letter was issued to Mr. Rogers concerning his responsibilities to resolve radio frequency interference issues.⁵ Mr. Rogers did not respond to the RFI Letter and the Seattle Office continued to receive complaints of interference. The Seattle Office issued a Warning Letter to Mr. Rogers on July 25, 2013,⁶ and received no response from Mr. Rogers. Agents from the Seattle Office returned to Mr. Rogers' residence on October 30, 2013, and confirmed through the use of direction finding techniques and the receiving equipment in their vehicle that the signals emanating from Mr. Rogers' residence on frequencies between 7 and 8 MHz were still active, and continued to cause interference to the licensed radio service.

III. APPLICABLE LAWS AND VIOLATIONS

6. Section 15.5(b) of the Rules states that “[o]peration of an intentional, unintentional, or incidental radiator is subject to the conditions that no harmful interference is caused.”⁷ Section 15.3(m) of the Rules defines harmful interference as “any emission, radiation or induction that . . . seriously degrades, obstructs or repeatedly interrupts a radio communications service operating in accordance with this chapter.”⁸ Section 15.3(n) defines an “incidental radiator” as “[a] device that generates radio frequency energy during the course of its operation although the device is not intentionally designed to generate or emit radio frequency energy.”⁹ Section 15.5(c) of the Rules requires that “[t]he operator of the radio frequency device shall be required to cease operating the device upon notification by a Commission representative that the device is causing harmful interference.”¹⁰

was sent, the subsequent notice of apparent liability “*would attach not only for the conduct occurring subsequently but also for the conduct for which the citation was originally sent*”) (emphasis added).

⁴ 47 U.S.C. §§ 154(i), 154(j), 403.

⁵ See Radio Frequency Interference Letter from Laura L. Smith, Special Counsel, Enforcement Bureau, to Thomas Rogers (Jun. 17, 2013) (On file in EB-FIELDWR-13-00009096) (RFI Letter).

⁶ See Warning Letter from Leo Cirbo, Acting District Director, Seattle Office, Western Region, Enforcement Bureau to Thomas Rogers (Jul. 25, 2013) (On file in EB-FIELDWR-13-00009096) (Warning Letter).

⁷ 47 C.F.R. § 15.5(b).

⁸ 47 C.F.R. § 15.3(m).

⁹ 47 C.F.R. § 15.3(n). Under this definition, light fixtures, such as the ones apparently used by Mr. Rogers, are incidental radiators.

¹⁰ 47 C.F.R. § 15.5(c).

7. Pursuant to Section 15.5(c) of the Rules, on June 17, 2013, Mr. Rogers was notified that incidental radiators were causing harmful interference to licensed communications. Mr. Rogers did not respond. Mr. Rogers was again notified on July 25, 2013, that an interfering signal on numerous frequencies between 7 and 8 MHz was emanating from his residence, and causing interference to licensed radio operations in Woodinville, Washington. Mr. Rogers did not respond. Based on the foregoing evidence, we find that Mr. Rogers violated Section 15.5(b) of the Rules by operating incidental radiators and causing harmful interference. Moreover, Mr. Rogers is directed to cease operation of the incidental radiators immediately, until the interference can be resolved.

IV. REQUEST FOR INFORMATION

8. Pursuant to Sections 4(i), 4(j), and 403 of the Communications Act,¹¹ Mr. Rogers is directed to describe the steps he has taken or plans to take to eliminate the harmful interference caused by his incidental radiators, as well as a timeline for any pending corrective actions, within thirty (30) calendar days after the release date of this Citation. A failure to respond in writing, or an inadequate, incomplete, or misleading response, may subject Mr. Rogers to additional sanctions.¹²

V. RESPONDING TO THIS CITATION

9. In addition to the required written information described in paragraphs 4 and 8, above, Mr. Rogers may, if he so chooses, respond to this Citation—challenging the factual and legal findings herein—within thirty (30) calendar days from the release date of this Citation either through (1) a written statement, (2) a teleconference interview, or (3) a personal interview at the Commission Field Office nearest to your place of business.

10. If you would like to arrange a teleconference or personal interview, please contact the Seattle Office at (425) 820-6271. The nearest Commission Field Office is located in Kirkland, Washington. Such teleconference or interview must take place within thirty calendar (30) days of the date of this Citation. If you would like to submit a written response, including any supporting documentation, you must send the response within thirty (30) calendar days of the date of this Citation to the contact and address provided in paragraph 11, below.

11. All written communications, including the information requested in paragraphs 4 and 8, above, should be provided to the address below.

Leo Cirbo
Federal Communications Commission
Seattle Office
11410 NE 122nd Way, Suite 312

¹¹ 47 U.S.C. §§ 154(i), 154(j), 403.

¹² See, e.g., *SBC Communications, Inc.*, Forfeiture Order, 17 FCC Rcd 7589, 7599–7600, paras. 23–28 (2002) (imposing \$100,000 forfeiture for egregious and intentional misconduct, *i.e.*, refusing to attest to truthfulness and accuracy of responses to a Letter of Inquiry (LOI)); *Connect Paging, Inc. d/b/a Get A Phone*, Forfeiture Order, 22 FCC Rcd 15146 (Enf. Bur. 2007) (imposing \$4,000 forfeiture for failure to respond to an LOI); *BigZoo.Com Corporation*, Order of Forfeiture, 20 FCC Rcd 3954 (Enf. Bur. 2005) (imposing \$20,000 forfeiture for failure to respond to a USF LOI); *Donald W. Kaminski, Jr.*, Forfeiture Order, 18 FCC Rcd 26065 (Enf. Bur. 2003) (imposing \$4,000 forfeiture for failure to respond to an LOI). See also *World Communications Satellite Systems, Inc.*, Notice of Apparent Liability for Forfeiture, 18 FCC Rcd 18545 (Enf. Bur. 2003) (proposing \$10,000 forfeiture for a non-responsive reply to an LOI); *Digital Antenna, Inc., Sunrise, Florida*, Notice of Apparent Liability for Forfeiture, 23 FCC Rcd 7600 (Enf. Bur. 2007) (proposing \$11,000 forfeiture for failure to provide complete responses to an LOI).

Kirkland, WA 98034
Re: **EB-FIELDWR-13-00009096**

12. Reasonable accommodations for people with disabilities are available upon request. Include a description of the accommodation you will need, and include as much detail as you can. Also include a way we can contact you if we need more information. Please allow at least five (5) business days advance notice; last minute requests will be accepted, but may be impossible to fill. Send an e-mail to fcc504@fcc.gov or call the FCC's Consumer & Governmental Affairs Bureau:

For sign language interpreters, CART, and other reasonable accommodations:
202-418-0530 (voice), 202-418-0432 (tty);

For accessible format materials (braille, large print, electronic files, and audio format):
202-418-0531 (voice), 202-418-7365 (tty).

13. Please be advised that it is a violation of Section 1.17 of the Commission's rules (47 C.F.R. § 1.17) for any person or a staff member of that person to make any false or misleading written or oral statement of fact. Specifically, no person shall:

(1) In any written or oral statement of fact, intentionally provide material factual information that is incorrect or intentionally omit material information that is necessary to prevent any material factual statement that is made from being incorrect or misleading; and

(2) In any written statement of fact, provide material factual information that is incorrect or omit material information that is necessary to prevent any material factual statement that is made from being incorrect or misleading without a reasonable basis for believing that any such material factual statement is correct and not misleading.¹³

14. Further, the knowing and willful making of any false statement, or the concealment of any material fact, in reply to this Citation is punishable by fine or imprisonment under 18 U.S.C. § 1001.

15. If you violate Section 1.17 of the Commission's rules or the criminal statute referenced above, you may be subject to further legal action, including monetary fines pursuant to Section 503 of the Communications Act.¹⁴

16. Under the Privacy Act of 1974, 5 U.S.C. § 552a(e)(3), we are informing you that the Commission's staff will use all relevant material information before it, including information that you disclose in your interview or written statement, to determine what, if any, enforcement action is required to ensure your compliance with the Communications Act and the Commission's rules.

VI. FUTURE VIOLATIONS

17. If, after receipt of this Citation Mr. Rogers again violates Section 15.5(b) of the Rules by engaging in conduct of the type described herein, the Commission may impose monetary forfeitures not to exceed \$16,000 for each such violation or each day of a continuing violation, and up to \$112,500 for

¹³ 47 C.F.R. § 1.17.

¹⁴ 47 U.S.C. § 503.

any single act or failure to act.¹⁵ For instance, the Commission could impose separate forfeitures for each day on which his incidental radiators cause harmful interference. Further, as discussed above, such forfeitures may be based on both the conduct that led to the Citation and the conduct following it.¹⁶ In addition, violations of the Communications Act or the Rules also can result in seizure of equipment through *in rem* forfeiture actions,¹⁷ as well as criminal sanctions, including imprisonment.¹⁸

VII. ORDERING CLAUSES

18. **IT IS ORDERED** that, pursuant to Sections 4(i), 4(j), and 403 of the Communications Act, Thomas Edward Rogers must provide the written information requested in paragraphs 4 and 8, above. The response to the request for information must be provided in writing, signed under penalty of perjury by Mr. Rogers verifying the truth and accuracy of the information and representations provided in the written response, and must be received by the FCC within thirty (30) calendar days after the release date of this Citation and Order.

19. **IT IS FURTHER ORDERED** that a copy of this Citation and Order shall be sent both by First Class U.S. Mail and Certified Mail, Return Receipt Requested, to Thomas Edward Rogers, at his residence.

FEDERAL COMMUNICATIONS COMMISSION

Leo Cirbo
Acting District Director
Seattle Office
Western Region
Enforcement Bureau

¹⁵ See 47 U.S.C. §§ 401, 501, 503; 47 C.F.R. § 1.80(b)(7). This amount is subject to further adjustment for inflation (see 47 C.F.R. § 1.80(b)(9)), and the forfeiture amount applicable to any violation will be determined based on the statutory amount designated at the time of the violation.

¹⁶ See paragraph 3, *supra*.

¹⁷ See 47 U.S.C. § 510.

¹⁸ See 47 U.S.C. §§ 401, 501.