

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

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

FORFEITURE ORDER

Adopted: June 17, 2014

Released: June 17, 2014

By the Regional Director, South Central Region, Enforcement Bureau:

I. INTRODUCTION

1. We impose a penalty of \$1,750 against Orloff Haines for operating a Citizens Band (CB) radio transmitter to interfere with the communications of other CB stations. Mr. Haines does not deny that he intentionally interfered with other CB communications. Instead, Mr. Haines requests reduction or cancellation of the forfeiture proposed by the Enforcement Bureau because he cannot afford to pay it. Although we do not cancel the fine, we reduce the monetary penalty based on Mr. Haines's documented inability to pay.

2. Specifically, in this Forfeiture Order (Order), we issue a monetary forfeiture in the amount of one thousand seven hundred fifty dollars (\$1,750) to Mr. Haines for willfully violating Section 333 of the Communications Act of 1934, as amended (Act), and Section 95.413(a)(3) of the Commission's rules (Rules).¹ The noted violations involved Mr. Haines's intentional interference with other CB communications.

II. BACKGROUND

3. On March 21, 2014, the Enforcement Bureau's Dallas Office (Dallas Office) issued a Notice of Apparent Liability for Forfeiture (NAL) to Mr. Haines for intentionally interfering with other CB communications.² As reflected in the NAL, on May 14, 2013, an agent from the Dallas Office determined that a continuous carrier on CB Channel 19 was emanating from Mr. Haines's residence in Enid, Oklahoma.³ That same day, the agent spoke to Mr. Haines, who admitted that he was continuously transmitting on Channel 19 to prevent other CB operators in the area from transmitting.⁴ In response to the NAL, Mr. Haines asserted that he is not able to work or pay the proposed forfeiture.⁵

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

² *Orloff Haines*, Notice of Apparent Liability for Forfeiture, 29 FCC Rcd 2903 (Enf. Bur. 2014) (NAL). A comprehensive recitation of the facts and history of this case can be found in the NAL and is incorporated herein by reference.

³ *Id.* at 2903–04, paras. 2, 4.

⁴ *Id.* at 2903, para. 2.

⁵ Letter from Orloff Haines to Dallas Office, South Central Region, Enforcement Bureau (rec. Apr. 1, 2014) (on file in EB-FIELDSCR-13-00008788) (NAL Response).

III. DISCUSSION

4. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Act,⁶ Section 1.80 of the Rules,⁷ and the *Forfeiture Policy Statement*.⁸ In examining Mr. Haines's *NAL 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.⁹ As discussed below, we have fully considered Mr. Haines's *NAL Response* in light of these statutory factors and find that cancellation of the forfeiture is not warranted. However, we find that reduction of the forfeiture is justified based solely on his inability to pay claim.

A. Mr. Haines Intentionally Interfered with CB Communications

5. We affirm the *NAL*'s finding that Mr. Haines willfully violated Section 333 of the Act and Section 95.413(a)(3) of the Rules.¹⁰ 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.¹¹ Section 95.413(a)(3) of the Rules states that CB radio operators shall not "interfere intentionally with the communications of another CB station."¹² It is undisputed that Mr. Haines transmitted a continuous carrier on CB Channel 19 to prevent other CB operators from transmitting on the channel. Therefore, based on the evidence before us, we conclude that Mr. Haines willfully violated Section 333 of the Act and Section 95.413(a)(3) of the Rules.

B. Inability to Pay Claim

6. Mr. Haines requests cancellation or reduction of the proposed forfeiture based on his inability to pay. With regard to an individual's or entity's inability to pay claim, the Commission has determined that, in general, gross income or revenues are the best indicator of an ability to pay a forfeiture.¹³ Based on the financial documents provided by Mr. Haines, we find sufficient basis to reduce the forfeiture to \$1,750.¹⁴ However, we caution Mr. Haines that a party's inability to pay is only one factor in our forfeiture calculation analysis, and is not dispositive.¹⁵ We have previously rejected inability to pay claims in cases of repeated or otherwise egregious violations.¹⁶ Therefore, future violations of this

⁶ 47 U.S.C. § 503(b).

⁷ 47 C.F.R. § 1.80.

⁸ *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*).

⁹ 47 U.S.C. § 503(b)(2)(E).

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

¹¹ 47 U.S.C. § 333.

¹² 47 C.F.R. § 95.413(a)(3).

¹³ See *Local Long Distance, Inc.*, Order of Forfeiture, 15 FCC Rcd 24385 (2000) (forfeiture not deemed excessive where it represented approximately 7.9 percent of the violator's gross revenues).

¹⁴ This forfeiture amount falls within the percentage range that the Commission has previously found acceptable. See *supra* note 13. If Mr. Haines finds it financially infeasible to make full payment of this amount within 30 days, he can request an installment plan, as described in *infra* paragraph 10 of this Order.

¹⁵ See 47 U.S.C. § 503(b)(2)(E).

¹⁶ *Kevin W. Bondy*, Forfeiture Order, 26 FCC Rcd 7840 (Enf. Bur. 2011) (holding that violator's repeated acts of malicious and intentional interference outweigh evidence concerning his ability to pay), *aff'd*, Memorandum Opinion and Order, 28 FCC Rcd 1170 (Enf. Bur. 2013), *aff'd*, Memorandum Opinion and Order, 28 FCC Rcd 16815 (continued . . .)

kind may result in significantly higher forfeitures that may not be reduced due to Mr. Haines's financial circumstances. Accordingly, after consideration of the entire record, including Mr. Haines's *NAL Response*, the *Forfeiture Policy Statement*, and the factors set forth in Section 503(b)(2)(E) of the Act,¹⁷ we find that, although cancellation of the monetary forfeiture is not warranted, a reduction of the forfeiture amount from \$12,000 to \$1,750 is appropriate in this case.

IV. ORDERING CLAUSES

7. 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(f)(4) of the Rules, Orloff Haines **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of one thousand seven hundred fifty dollars (\$1,750) for violations of Section 333 of the Act and Section 95.413(a)(3) of the Rules.¹⁸

8. 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 Order.¹⁹ 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.²⁰ Mr. Haines shall send electronic notification of payment to SCR-Response@fcc.gov on the date said payment is made.

9. 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.²¹ 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 –

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(Enf. Bur. 2013); *Hodson Broad.*, Forfeiture Order, 24 FCC Rcd 13699 (Enf. Bur. 2009) (holding that permittee's continued operation at variance with its construction permit constituted an intentional and continuous violation, which outweighed permittee's evidence concerning its ability to pay the proposed forfeitures).

¹⁷ 47 U.S.C. § 503(b)(2)(E). See 47 C.F.R. § 1.80(b)(8).

¹⁸ 47 U.S.C. §§ 333, 503(b); 47 C.F.R. §§ 0.111, 0.204, 0.311, 0.314, 1.80(f)(4), 95.413(a)(3).

¹⁹ 47 C.F.R. § 1.80.

²⁰ 47 U.S.C. § 504(a).

²¹ An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

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. 20554.²² 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, and first class mail to Orloff Haines at his address of record.

FEDERAL COMMUNICATIONS COMMISSION

Dennis P. Carlton
Regional Director, South Central Region
Enforcement Bureau

²² See 47 C.F.R. § 1.1914.