

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

| | | |
|------------------|---|----------------------------------|
| In the Matter of |) | |
| |) | |
| CMARR, Inc. |) | File No: EB-FIELDSCR-13-00011740 |
| |) | |
| San Juan, PR |) | NAL/Acct. No.: 201432680004 |
| |) | |
| |) | FRN: 0018774943 |

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: June 24, 2014

Released: June 24, 2014

By the Resident Agent, San Juan Office, South Central Region, Enforcement Bureau:

I. INTRODUCTION

1. We propose a penalty of \$25,000 against CMARR, Inc. (CMARR), for apparently willfully interfering with a Federal Aviation Administration (FAA) weather radar in San Juan, Puerto Rico, by operating radio transmitters without a license. Given the risk to public safety created by CMARR's unlicensed operations, and the fact that CMARR had already received a warning for similar violations, these actions warrant a significant penalty.

2. In this Notice of Apparent Liability for Forfeiture (*NAL*), we find that CMARR, operator of an Unlicensed National Information Infrastructure (U-NII) transmission system in San Juan, Puerto Rico, apparently willfully and repeatedly violated Sections 301 and 333 of the Communications Act of 1934, as amended (Act),¹ by causing interference to the FAA by operating an intentional radiator without a license. We conclude that CMARR is apparently liable for forfeiture in the amount of twenty-five thousand dollars (\$25,000).

II. BACKGROUND

3. As part of its ongoing coordination efforts with the FAA, the Enforcement Bureau received a complaint about radio emissions causing interference to the FAA's Terminal Doppler Weather Radar (TDWR) installation serving the San Juan International Airport. TDWR installations exist at 45 major airports in the United States and Puerto Rico and assist air traffic controllers in detecting low-altitude wind shear that can pose a risk to aircraft.² The TDWR serving the San Juan International Airport operates on the center frequency of 5610 MHz.

4. On November 13, 2013, in response to an FAA complaint of interference, an agent from the Enforcement Bureau's San Juan Office (San Juan Office) monitored radio transmissions on the frequency 5610 MHz in the San Juan area, which were originating on an azimuth of 129 degrees true north from the TDWR site, the same direction as the source of the interference reported by the FAA. On November 13 and 18, 2013, the agent, using direction-finding techniques, identified the source of the transmissions on 5610 MHz as the rooftop of the RP Auto Parts Store on Pineiro Avenue in San Juan. On November 18, 2013, the agent, accompanied by CMARR's owner, conducted an inspection of the rooftop and found that the transmissions on 5610 MHz were not present. CMARR's owner confirmed that all of

¹ 47 U.S.C. §§ 301, 333.

² MIT Lincoln Laboratories, <http://www.ll.mit.edu/mission/aviation/faawxsystems/tdwr.html> (last visited Jan. 26, 2011).

the transmitters on the rooftop belonged to CMARR and that the highest transmitter on a tower on the rooftop, an Ubiquiti Rocket model M5, had been transmitting on 5610 MHz. He also stated that the transmitter had been retuned away from 5610 MHz minutes before the agent arrived at approximately 3:15 P.M. The agent subsequently learned that the FAA reported the interference to the TDWR serving the San Juan Airport ceased between 3:10 and 3:22 P.M. on November 18, 2013, thus confirming that CMARR's device was the source of the interference.³

5. The Rocket M5 model is certified for use as a Part 15 intentional radiator only in the 5745-5825 MHz band⁴ and is not certified as a U-NII intentional radiator.⁵ According to Commission records, CMARR does not hold a license to operate on 5610 MHz from this location in San Juan, Puerto Rico.

III. DISCUSSION

6. 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.⁶ 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.⁷ 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,⁸ and the Commission has so interpreted the term in the Section 503(b) context.⁹ The Commission may also assess a forfeiture for violations that are merely repeated, and not

³ U-NII operators located within 35 km or line of sight of a TDWR installation have been urged to implement a 30 MHz guardband around the TDWR center operating frequency, to prevent interference to the TDWR. *See* Memorandum from Julius Knapp, Chief, Office of Engineering and Technology, FCC, and P. Michele Ellison, Chief, Enforcement Bureau, FCC, to Manufacturers and Operators of Unlicensed 5 GHz Outdoor Network Equipment Re: Elimination of Interference to Terminal Doppler Weather Radar (TDWR) (dated July 27, 2010), available at <http://transition.fcc.gov/eb/uniitdwr.pdf> (last visited April 27, 2013). The RP Auto Parts Store is less than 15 km from the TDWR serving the San Juan International Airport.

⁴ Agents from the San Juan Office were unable to determine the FCC IDs for the Rocket M5's in use. However, there are five FCC IDs associated with Ubiquiti Rocket M5 devices: SWX-M5, SWX-M5B, SWX-M5G, SWX-M5L and SWX-M5D. All of these FCC IDs are certified as Part 15C devices and are authorized to operate only in the 5745 MHz – 5825 MHz band.

⁵ 47 C.F.R. § 15.403(s) (defining U-NII devices as "[i]ntentional radiators operating in the frequency bands 5.15-5.35 GHz and 5.470-5.825 GHz that use wideband digital modulation techniques and provide a wide array of high data rate mobile and fixed communications for individuals, businesses, and institutions."). Although CMARR's devices were not authorized to operate in the U-NII bands, they are subject to the U-NII rules (47 C.F.R. 15.401-15.407) because CMARR operated them as U-NII devices on U-NII frequencies.

⁶ 47 U.S.C. § 503(b).

⁷ 47 U.S.C. § 312(f)(1).

⁸ 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. 'Repeated' means more than once, or where the act is continuous, for more than one day. Whether an act is considered to be 'continuous' would depend upon the circumstances in each case. The definitions are intended primarily to clarify the language in Sections 312 and 503, and are consistent with the Commission's application of those terms").

⁹ *See, e.g., Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991), *recons. denied*, 7 FCC Rcd 3454 (1992).

willful.¹⁰ The term “repeated” means the commission or omission of such act more than once or for more than one day.¹¹

A. Willful Interference with FAA Weather Radar

7. 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.¹² The evidence is sufficient to find that CMARR apparently willfully interfered with the FAA’s TDWR serving the San Juan International Airport, because it was on notice that its actions could cause harmful interference. In response to a complaint of interference from the FAA, on November 6, 2013, an agent from the San Juan Office warned CMARR’s owner verbally that its unlicensed operations from the roof of the Cobian Plaza Condo Building in San Juan Puerto Rico were causing interference to the FAA’s weather radar and must stop. The agent determined CMARR operated an Ubiquiti Rocket M5 on 5610 MHz, and CMARR’s owner confirmed the operations. Therefore, on November 13 and 18, 2013, CMARR was aware that operating an Ubiquiti Rocket M5 on 5610 MHz, the center frequency of the TDWR, could cause harmful interference to the FAA’s weather radar. An agent from the San Juan Office determined and CMARR admits that it operated an Ubiquiti Rocket M5 on 5610 MHz on the rooftop of the RP Auto Parts Store, and its operations did in fact interfere with the TDWR. Thus, based on the evidence before us, we find that CMARR apparently willfully and repeatedly violated Section 333 of the Act by willfully interfering with the FAA’s weather radar.

B. Unlicensed Operation of U-NII Intentional Radiator

8. Section 301 of the Act requires 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.¹³ Part 15 of the Commission’s rule (Rules),¹⁴ however, sets forth conditions under which intentional radiators may operate without an individual license. Pursuant to Section 15.1(b) of the Rules, “the operation of an intentional or unintentional radiator that is not in accordance with the regulations in [Part 15] must be licensed pursuant to the provisions of Section 301 of the Communications Act...”¹⁵ Thus, if an intentional radiator fails to comply with the conditions set forth in its equipment authorization,¹⁶ the operation is no longer covered under the unlicensed provisions of those Rules and must obtain an individual license pursuant to Section 301 of the Act.

9. On November 13 and November 18, 2013, as described above, an agent from the San Juan Office observed CMARR operate a Part 15 intentional radiator, a Ubiquity Rocket M5, on the center frequency of 5610 MHz from the rooftop of the RP Auto Parts Store in San Juan, Puerto Rico. The device is not certified for use on the frequency 5610 MHz. Therefore, CMARR’s operations did not

¹⁰ See, e.g., *Callais Cablevision, Inc.*, Notice of Apparent Liability for Monetary Forfeiture, 16 FCC Rcd 1359, 1362, para. 10 (2001) (*Callais Cablevision, Inc.*) (proposing a forfeiture for, *inter alia*, a cable television operator’s repeated signal leakage).

¹¹ Section 312(f)(2) of the Act, 47 U.S.C. § 312(f)(2), which also applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that “[t]he term ‘repeated’, when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day.” See *Callais Cablevision, Inc.*, 16 FCC Rcd at 1362.

¹² 47 U.S.C. § 333.

¹³ 47 U.S.C. § 301.

¹⁴ See 47 C.F.R. §§ 15.1 *et seq.*

¹⁵ 47 C.F.R. § 15.1(b).

¹⁶ See 47 C.F.R. § 15.201(b) (providing that all intentional radiators operating under Part 15 of the Rules be certificated by the Commission). The Commission issues equipment authorizations for such devices, which set forth relevant conditions for the grant.

comply either with the device's Equipment Authorization or Part 15 requirements and thus required a license. According to Commission records, CMARR does not hold a license to operate on the frequency of 5610 MHz in San Juan, Puerto Rico. Thus, based on the evidence before us, we find that CMARR apparently willfully and repeatedly violated Section 301 of the Act by operating an unlicensed radio transmitter on November 13 and 18, 2013.

C. Proposed Forfeiture

10. Pursuant to the Commission's *Forfeiture Policy Statement* and Section 1.80 of the Rules, the base forfeiture amount for interference is \$7,000 and operation without an instrument of authorization is \$10,000.¹⁷ 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.¹⁸ The fact that CMARR operated an unlicensed transmitter and created a safety hazard by causing interference to the FAA's weather radar after being put on notice that its actions could cause harmful interference and violated the Act demonstrates an egregious and deliberate disregard for the Commission's requirements. Thus, we find that an upward adjustment in the base forfeiture amounts of \$8,000 is warranted.¹⁹

11. Although we could impose larger upward adjustments for CMARR's apparent violations, we decline to do so, based on the particular circumstances of this case. We caution CMARR and other U-NII service providers, however, that we may do so in future cases if the circumstances warrant or if our current approach does not serve as a sufficient deterrent. Applying the *Forfeiture Policy Statement*, Section 1.80 of the Rules, and the statutory factors to the instant case, we therefore conclude that CMARR is apparently liable for a total forfeiture of \$25,000 for violations of Section 301 and 333 of the Act.

IV. ORDERING CLAUSES

12. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Act, and Sections 0.111, 0.311, 0.314 and 1.80 of the Rules, CMARR, Inc. is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of twenty-five thousand dollars (\$25,000) for violations of Sections 301 and 333 of the Act.²⁰

13. **IT IS FURTHER ORDERED** that, pursuant to Section 1.80 of the Rules within thirty days of the release date of this Notice of Apparent Liability for Forfeiture and Order, CMARR, Inc. **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

14. 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. CMARR, Inc. 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

¹⁷ *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.

¹⁸ 47 U.S.C. § 503(b)(2)(E).

¹⁹ See, e.g., *Estevan J. Gutierrez*, Notice of Apparent Liability for Forfeiture, 26 FCC Rcd 12542 (Enf. Bur. 2011) (upwardly adjusted \$17,000 base forfeiture amounts for violations of Sections 301 and 333 to \$25,000 because of threats and interference to public safety); *Gabriel A. Garcia*, Notice of Apparent Liability for Forfeiture, 26 FCC Rcd 3750 (Enf. Bur. 2011) (upward adjustment warranted for unlicensed operation, with full knowledge that such activity violated the Act, which resulted in interference to public safety radio operations).

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

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 – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.

15. 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 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.

16. 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.²³ Mail the written statement to Federal Communications Commission, Enforcement Bureau, South Central Region, #150 Carlos Chardon St., US Federal Building Room 762 San Juan, PR 00918-1731 and must include the NAL/Acct. No. referenced in the caption. The statement should also be emailed to SCR-Response@fcc.gov.

17. 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 practices (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.

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

²² See 47 C.F.R. § 1.1914.

²³ 47 C.F.R. §§ 1.16, 1.80(f)(3).

18. **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 CMARR, Inc. at POB 21377, San Juan, PR00928.

FEDERAL COMMUNICATIONS COMMISSION

Reuben Jusino
Resident Agent
San Juan, PR