

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of)	
)	
Custom Computers d.b.a. Winchester Wireless)	File No.: EB-FIELDNER-13-00009170
)	NAL/Acct. No.: 201432340001
Operator of Wireless Internet Service Provider)	FRN: 0023200199
Winchester, VA)	

FORFEITURE ORDER

Adopted: June 30, 2015

Released: June 30, 2015

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. We impose a penalty of \$4,800 against Custom Computers d.b.a. Winchester Wireless (Winchester Wireless) for unauthorized use of external amplifiers at its transmitter sites. Unauthorized operations can result in harmful interference to licensed spectrum users and void the authority to operate without a license. Winchester Wireless does not deny that its transmitters were connected to external amplifiers or that its transmitters are not certified for use with external amplifiers. However, Winchester Wireless requests cancellation of the penalty proposed against it, claiming the Enforcement Bureau (Bureau) failed to establish that its transmitting equipment was in operation at the time of inspection or that it exercised control over the transmitting equipment. Winchester Wireless also requests a forfeiture reduction based on its inability to pay. We find that Winchester Wireless’s equipment was in operation during the inspection and that it exercised sufficient control over the equipment to hold it liable for the unauthorized operation violations. We therefore find insufficient basis to cancel the forfeiture, but conclude that reducing the forfeiture to \$4,800 is appropriate based on Winchester Wireless’s demonstrated inability to pay.

II. BACKGROUND

2. On May 10, 2011, in response to a complaint, an agent from the Bureau’s Columbia Office inspected a transmitter operated by Winchester Wireless at Wardensville Grade in Winchester, Virginia.¹ During the inspection, the agent determined that the transmitter was a Motorola Canopy System transmitter and found two external RF Linx 900 MHz amplifiers connected to the transmitter.² The agent subsequently reviewed the equipment authorization for the Motorola Canopy System and found that the transmitter was not certified for use with external amplifiers.³ The agent also interviewed Winchester Wireless’s owner David Williamson, who admitted using the external amplifiers on the Wardensville Grade transmitter.⁴ On August 11, 2011, the Columbia Office issued a Notice of Unlicensed Operation (2011 NOUO) to

¹ See *Custom Computers d.b.a. Winchester Wireless*, Notice of Apparent Liability for Forfeiture and Order, 29 FCC Rcd 2641, 2642, para. 3 (Enf. Bur. 2014) (*NAL*). The *NAL* includes a more complete discussion of the facts and history of this case and is incorporated herein by reference.

² *Id.*

³ See FCC ID ABZ89FC5809.

⁴ *NAL*, 29 FCC Rcd at 2642, para. 3.

Winchester Wireless regarding its unauthorized use of external amplifiers at Wardensville Grade.⁵ Mr. Williamson responded to the 2011 NOUO and reported that Winchester Wireless had removed the external amplifiers from the Wardensville Grade site.⁶

3. On May 29, 2013, in response to additional complaints, an agent from the Columbia Office inspected two additional transmitter sites operated by Winchester Wireless on Pepper Lane and Shawnee Trail in Winchester, Virginia.⁷ At both sites, the agent observed signals on the 900 MHz band emanating from the same Motorola Canopy System transmitters and RF Linx amplifiers observed during the May 2011 Wardensville Grade site investigation.⁸ On July 29, 2013, the Columbia Office issued another Notice of Unlicensed Operation (2013 NOUO) to Winchester Wireless ordering it to cease its unauthorized use of external amplifiers and warning that future unauthorized operations at the Pepper Lane and Shawnee Trail sites could result in significant penalties.⁹ Mr. Williamson responded to the 2013 NOUO, stating it would investigate the Pepper Lane and Shawnee Trail sites to assess Winchester Wireless's compliance.¹⁰ On March 11, 2014, the Bureau issued the *NAL* proposing a \$25,000 forfeiture against Winchester Wireless for its apparent willful violations of Section 301 of the Communications Act of 1934, as amended (Act), and Section 15.1(b) of the Commission's rules (Rules) by operating its transmitters with external amplifiers without authorization.¹¹

4. On April 10, 2014, Winchester Wireless filed a response to the *NAL*.¹² Winchester Wireless argues that the *NAL* should be canceled because the Bureau did not establish that the equipment at the Pepper Lane and Shawnee Trail sites was in operation at the time of the inspection.¹³ Winchester Wireless also contends that the Bureau failed to demonstrate that it exercised actual working control over the equipment and suggests that local residents attached the external amplifiers to its transmitters.¹⁴ Finally, Winchester Wireless states that payment of the proposed penalty would represent an "undue hardship" and provided federal tax returns in support of its inability to pay claim.¹⁵

III. DISCUSSION

5. The Bureau proposed a forfeiture in this case in accordance with Section 503(b) of the Act,¹⁶ Section 1.80 of the Rules,¹⁷ and the Commission's *Forfeiture Policy Statement*.¹⁸ When we assess

⁵ *Custom Computers d.b.a. Winchester Wireless*, Notice of Unlicensed Operation (Enf. Bur. 2011) (on file in EB-FIELDNER-13-00009170) (2011 NOUO).

⁶ See E-mail from David Williamson, owner of Winchester Wireless, to Shannon Gunter, Columbia Office, Enforcement Bureau (August 29, 2011) (on file in EB-FIELDNER-13-00009170).

⁷ *NAL*, 29 FCC Rcd at 2642, para. 5.

⁸ *Id.*

⁹ *Custom Computers d.b.a. Winchester Wireless*, Notice of Unlicensed Operation (July 29, 2013) (on file in EB-FIELDNER-13-00009170) (2013 NOUO).

¹⁰ See E-mail from David Williamson, owner of Winchester Wireless, to Shannon Gunter, Columbia Office, Enforcement Bureau (July 31, 2013) (on file in EB-FIELDNER-13-00009170).

¹¹ *NAL*, 29 FCC Rcd at 2644–45, paras. 8, 12; 47 U.S.C. § 301; 47 C.F.R. § 15.1(b).

¹² See *Custom Computers d.b.a. Winchester Wireless*, Response to Notice of Apparent Liability for Forfeiture and Order (Apr. 10, 2014) (on file in EB-FIELDNER-13-00009170) (*NAL Response*).

¹³ See *NAL Response* at 2–4.

¹⁴ *Id.*

¹⁵ *Id.* at 4–5, Attachment. On May 26 and 29, 2015, at the request of Bureau staff, Winchester Wireless provided updated financial data in support of its inability to pay claim.

¹⁶ 47 U.S.C. § 503(b).

¹⁷ 47 C.F.R. § 1.80.

forfeitures, Section 503(b)(2)(E) requires that we 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 such other matters as justice may require.”¹⁹ As discussed below, we have fully considered Winchester Wireless’s response to the *NAL*, and find that a forfeiture reduction is warranted based on inability to pay.

A. Winchester Wireless Operated its Transmitters with External Amplifiers without Authorization

6. Winchester Wireless argues that the Bureau failed to establish that the equipment at the Pepper Lane and Shawnee Trail sites was in operation at the time of the inspection.²⁰ We disagree. During the inspection of the Pepper Lane and Shawnee Trail sites, the agent discovered the same Motorola Canopy System transmitters and RF Linx amplifiers that he observed during the May 2011 investigation of Winchester Wireless’s Wardensville Grade site.²¹ Although the equipment was located on inaccessible towers and masts,²² the agent collected sufficient evidence demonstrating that the equipment was operational. First, the agent used a spectrum analyzer and directional antenna to locate the source of the radiofrequency signals in the 900 MHz band to the Pepper Lane and Shawnee Trail sites. Second, the agent obtained spectrum snapshots at each location, providing visual documentation of the transmissions. Third, the agent took pictures showing the connection of the RF Linx amplifiers to the Motorola Canopy System transmitters. With this evidence, there is no requirement that the agent directly examine the equipment at the Pepper Lane and Shawnee Trail sites. As a result, we find sufficient evidence in the record that the equipment at the Pepper Lane and Shawnee Trail sites was in operation at the time of the inspection.

7. We also find that Winchester Wireless exercised sufficient control over the general conduct or management of the Pepper Lane and Shawnee Trail sites to find it liable for operating its transmitters with external amplifiers without authorization. As Winchester Wireless acknowledges, the term “operate” is broadly defined to include “the general conduct or management of a station as a whole, as distinct from the specific technical work involved in the actual transmission of signals.”²³ In other words, the use of the word “operate” captures “not just the actual, mechanical manipulation of radio apparatus, but also operation of a . . . station generally.”²⁴ The Commission therefore can consider whether an entity exercises “any means of actual working control over the operation of the [station] in whatever manner exercised” when determining whether such entity is liable for the unauthorized operations of a station.²⁵ We have found such actual working control when a party holds itself out as the

(Continued from previous page)

¹⁸ *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*, Memorandum Opinion and Order, 15 FCC Rcd 303 (1999).

¹⁹ 47 U.S.C. § 503(b)(2)(E).

²⁰ See *NAL Response* at 2–4.

²¹ *NAL*, 29 FCC Rcd at 2642, para. 5.

²² *Id.* at para. 5 n. 13.

²³ See *NAL Response* at 3; *Campbell v. United States*, 167 F.2d 451, 453 (5th Cir. 1948); see also *Daniel K. Roberts*, Memorandum Opinion and Order, 29 FCC Rcd 1220, 1222, para. 5 (Enf. Bur. 2014),

²⁴ *Roberts*, 29 FCC Rcd at 1222, para. 5 (internal quotations omitted); *Vicot Chery*, Forfeiture Order, 28 FCC Rcd 16065, 16066, para. 4 (Enf. Bur. 2013) (internal quotations omitted).

²⁵ *Roberts*, 29 FCC Rcd at 1222, para. 5 (citing *Revision of Rules and Policies for the Direct Broadcast Satellite Service*, Report and Order, 11 FCC Rcd 9712, 9747, para. 91 (1995), *aff’d sub nom. DIRECTV, Inc. v FCC*, 110 F.3d 816 (D.C. Cir 1997)).

manager of an unauthorized station,²⁶ accesses an unauthorized station's transmitter,²⁷ or operates station equipment in an unauthorized manner.²⁸

8. In its *NAL Response*, Winchester Wireless argues that the Bureau never established that it operated from the Pepper Lane and Shawnee Trail sites.²⁹ However, as noted in the *NAL*, Winchester Wireless stated that it would investigate the compliance of its operations at the Pepper Lane and Shawnee Trail sites in response to the 2013 NOUO.³⁰ As a result, Winchester Wireless held itself out as having control over the general conduct or management of the Pepper Lane and Shawnee Trail sites and stated that it would access the transmitter sites in order to assess the compliance of its operations. Winchester Wireless nevertheless suggests that if the forfeiture must be cancelled because local residents could have attached the external amplifiers to their transmitters.³¹ Winchester Wireless provides no evidence to support this claim.³² However, the mere fact that a third party's actions may have led to the violations does not absolve Winchester Wireless because "liability for unlicensed operation may be assigned to any individual taking part in the operation of the unlicensed station, regardless of who else may be responsible for the operation."³³ Even if the residents attached the external amplifiers, Winchester Wireless's continued operation of its transmitters while failing to ensure that such operation conformed to its equipment authorization violated the Act and Rules.³⁴ The Commission has previously determined that the operation of a station in an unauthorized manner, even if the licensee is not aware of the unauthorized operation, constitutes a violation.³⁵ As a result, we conclude that Winchester Wireless exercised control over the

²⁶ See *id.* at 1222–23, para. 6 (finding individual exercised actual working control when he held himself out publicly as the manager of a pirate radio station).

²⁷ See *Vicot Chery*, 28 FCC Rcd at 16066, para. 5 (finding individual exercised actual working control when he showed agents the location of the transmitter of an unlicensed radio station); *Damian Anthony Ojouku Allen*, Notice of Apparent Liability for Forfeiture, 27 FCC Rcd 7956, 7958, para. 6 (Enf. Bur. 2012) (same), *aff'd*, Forfeiture Order, 27 FCC Rcd 14001 (Enf. Bur. 2012).

²⁸ See *Catholic Radio Network of Loveland, Inc.*, Memorandum Opinion and Order, FCC 15-66, para. 2 (June 11, 2015) (finding entity exercised actual working control when it operated station resulting in unauthorized emissions); *Steckline Commc'ns*, Forfeiture Order, 29 FCC Rcd 1082, 1084, para. 5 (Enf. Bur. 2014) (finding entity exercised actual working control when it operated station at unauthorized power level).

²⁹ *NAL Response* at 3.

³⁰ *NAL*, 29 FCC Rcd at 2642–43, para. 5 (citing E-mail from David Williamson, owner of Winchester Wireless, to Shannon Gunter, Columbia Office, Enforcement Bureau (July 31, 2013) (on file in EB-FIELDNER-13-00009170)).

³¹ *NAL Response* at 3–4.

³² Compare *Vernon Broad., Inc.*, Memorandum Opinion and Order, 60 Rad. Reg. 2d 1275 (1986) (cancelling a \$1,000 AM tower fencing violation where the evidence indicated that the fencing was vandalized just prior to inspection).

³³ *Glen Rubash*, 28 FCC Rcd 15922, 15924, para. 5 (Enf. Bur. 2013). See *Steckline Commc'ns, Inc.*, 29 FCC Rcd at 1084, para. 5 (finding violations even in the event of third-party tampering with station equipment because the party continued to operate the station at variance from authorized parameters).

³⁴ *Steckline Commc'ns*, 29 FCC at 1084, para. 5 ("Even if a third party tampered with the Station's equipment, Steckline's continued operation of the Station while failing to monitor its power level and directional pattern and discover its non-compliance, rendered its actions willful.").

³⁵ See, e.g., *Catholic Radio Network of Loveland, Inc.*, Memorandum Opinion and Order, 30 FCC Rcd 988, 989, para. 4 (Enf. Bur. 2015) (finding violation repeated even when party was unaware of overpower station operation due to faulty equipment), *aff'd*, Memorandum Opinion and Order, FCC 15-66 (June 11, 2015); *Playa Del Sol Broadcasters*, Order on Review, 28 FCC Rcd 2666, 2668–69, para. 6 (2013) (concluding that because the licensee consciously and deliberately operated its station resulting in unauthorized emissions the violation was willful, irrespective of any intent by the licensee to violate the law).

general conduct or management of the Pepper Lane and Shawnee Trail sites and find no basis to cancel the proposed penalty.

B. Winchester Wireless's Demonstrated Inability to Pay Warrants a Forfeiture Reduction

9. Winchester Wireless also seeks a reduction of the proposed forfeiture based on an inability to pay and provided financial documentation supporting its claim.³⁶ 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.³⁷ Based on the financial documents provided by Winchester Wireless, we find sufficient basis to reduce the forfeiture to \$4,800.³⁸ However, we caution Winchester Wireless that a party's inability to pay is only one factor in our forfeiture calculation analysis, and is not dispositive.³⁹ We have previously rejected inability to pay claims in cases of repeated intentional and malicious acts or otherwise egregious violations.⁴⁰ We therefore warn Winchester Wireless that we could impose significantly higher penalties regardless of its financial circumstances if the forfeiture imposed here does not serve as a sufficient deterrent or if future violations evidence a pattern of deliberate disregard for the Commission's rules.

10. Based on the record before us and in light of the applicable statutory factors, we conclude that Winchester Wireless willfully violated Section 301 of the Act and Section 15.1(b) of the Rules by operating its transmitters with external amplifiers without authorization. We further find after consideration of the entire record, including Winchester Wireless's *NAL Response* and supportive financial materials, that cancellation of the proposed forfeiture against is unwarranted, but a reduction of the forfeiture amount to \$4,800 is appropriate based on Winchester Wireless's demonstrated inability to pay.

IV. ORDERING CLAUSES

11. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Act⁴¹ and Section 1.80 of the Rules,⁴² Custom Computers d.b.a. Winchester Wireless **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of four thousand eight hundred dollars (\$4,800) for willfully violating Section 301 of the Act and Section 15.1(b) of the Rules.⁴³

³⁶ *NAL Response* at 4–5, Attachment.

³⁷ 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); see also *Tommie Salter*, Forfeiture Order, 30 FCC Rcd 1041 (Enf. Bur. 2015) (finding reduced forfeiture fell within the percentage range that the Commission previously found acceptable).

³⁸ This forfeiture amount falls within the percentage range that the Commission previously found acceptable. See *supra* note 37. If Winchester Wireless finds it financially infeasible to make full payment of this amount within 30 days, it can request an installment plan, as described in paragraph 14 of this Forfeiture Order.

³⁹ See 47 U.S.C. § 503(b)(2)(E).

⁴⁰ See, e.g., *TV Max, Inc., et al.*, Forfeiture Order, 29 FCC Rcd 8648, 8661, para. 25 (2014) (noting that the Commission "has previously rejected inability to pay claims in cases of repeated or otherwise egregious violations"); *Kevin W. Bondy*, Forfeiture Order, 26 FCC Rcd 7840 (Enf. Bur. 2011) (holding that violator's repeated acts of malicious and intentional interference outweighed 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 (Enf. Bur. 2013); *Whisler Fleurinor*, Forfeiture Order, 28 FCC Rcd 1087, 1090, para. 9 (Enf. Bur. 2013) (violator's demonstrated inability to pay outweighed by gravity of multiple intentional violations).

⁴¹ 47 U.S.C. § 503(b).

⁴² 47 C.F.R. § 1.80.

⁴³ 47 U.S.C. § 301; 47 C.F.R. § 15.1(b).

12. 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 of this Forfeiture Order.⁴⁴ 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.⁴⁵

13. 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. Custom Computers d.b.a. Winchester Wireless shall send electronic notification of payment to Kathy Harvey at Kathy.Harvey@fcc.gov, JoAnn Lucanik at JoAnn.Lucanik@fcc.gov, and to Samantha Peoples at Sam.Peoples@fcc.gov on the date said payment is made. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted.⁴⁶ When completing the 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 that should be followed based on the form of payment selected:

- Payment by check or money order must be made payable to the order of the Federal Communications Commission. Such payments (along with completed Form 159) must be mailed to the 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.

14. 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, SW, Room 1-A625, Washington, DC 20554.⁴⁷ Questions regarding payment procedures should be directed to the Financial Operations Group Help Desk by telephone, 1-877-480-3201, or by e-mail, ARINQUIRIES@fcc.gov.

⁴⁴ 47 C.F.R. § 1.80.

⁴⁵ 47 U.S.C. § 504(a).

⁴⁶ An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

⁴⁷ See 47 C.F.R. § 1.1914.

15. **IT IS FURTHER ORDERED** that a copy of this Forfeiture Order shall be sent by first class mail and certified mail, return receipt requested, to David Williamson, Owner, Custom Computers d.b.a. Winchester Wireless, 2979 Valley Avenue, Winchester, Virginia 22601, and to Stephen E. Coran, Esq., Lerman Senter, PLLC, 2000 K Street, N.W., Suite 600, Washington, DC 20554.

FEDERAL COMMUNICATIONS COMMISSION

Travis LeBlanc
Chief
Enforcement Bureau