

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of)	
)	
David J. Tolassi)	File No.: EB-FIELDSCR-15-00019567 ¹
Licensee of Amateur Station W4BHV)	NAL/Acct. No.: 201532480001
Ringgold, GA)	FRN: 0009319138

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: July 22, 2015

Released: July 22, 2015

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

I. INTRODUCTION

1. We propose a penalty of \$1,000 against amateur radio station operator David J. Tolassi for failing to transmit his assigned call sign in the Amateur Radio Service. The Commission previously warned Mr. Tolassi of the station identification requirement, which supports the orderly administration of the Amateur Radio Service by allowing licensed users to identify a transmission's source. Mr. Tolassi's deliberate disregard of the Commission's warning warrants the proposed penalty.

II. BACKGROUND

2. The Amateur Radio Service affords qualified people of any age the opportunity to transmit communications solely for personal uses and without pecuniary interest. Mr. Tolassi holds a General Class license in the Amateur Radio Service and has a history of failing to comply with the rules governing the Amateur Radio Service. On August 11, 2014, the Commission issued Mr. Tolassi a written warning regarding his failure to identify his amateur station while operating on the frequency of 14.313 MHz on July 22, 2014.² The warning stated that he could face severe penalties, including fines, if he failed to identify his station during future transmissions.³

3. On June 24, 2015, agents from the Atlanta Office of the Enforcement Bureau used mobile direction finding techniques to locate the source of a signal on 14.313 MHz to Mr. Tolassi's residence in Ringgold, Georgia. The agents monitored and recorded transmissions during which Mr. Tolassi failed to transmit his assigned call sign (W4BHV). The agents interviewed Mr. Tolassi later that evening, and, while he admitted operating that evening, he denied making the unidentified transmissions.

III. DISCUSSION

4. We find that Mr. Tolassi apparently repeatedly violated Section 97.119(a) of the Commission's rules (Rules).⁴ Section 97.119(a) of the Rules states that "[e]ach amateur station . . . must transmit its assigned call sign on its transmitting channel at the end of each communication, and at least every 10 minutes during a communication, for the purpose of clearly making the source of the transmissions from the station known to those receiving the transmissions. No station may transmit unidentified

¹ The investigation was initially assigned File No. EB-FIELDNER-15-00019472. Any future correspondence with the Commission concerning this matter should reflect the new case number.

² Letter to David J. Tolassi, Amateur Radio Licensee W4BVH, from Laura L. Smith, Special Counsel, Enforcement Bureau (Aug. 11, 2014).

³ *Id.*

⁴ 47 C.F.R. § 97.119(a).

communications or signals, or transmit as the station call sign, any call sign not authorized to the station.”⁵ On June 24, 2015, agents from the Atlanta Office observed Mr. Tolassi make multiple brief transmissions without stating his call sign W4BVH. As a result, we find Mr. Tolassi apparently repeatedly violated Section 97.119(a) of the Rules by failing to transmit his assigned call sign.

5. Section 503(b) of the Communications Act of 1934, as amended (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 Here, Section 503(b)(2)(D) of the Act authorizes us to assess a forfeiture against Mr. Tolassi of up to \$16,000 for each day of a continuing violation, up to a statutory maximum of \$122,500 for a single act or failure to act.⁷ In exercising our forfeiture authority, we must consider 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.”⁸ In addition, the Commission has established forfeiture guidelines; they establish base penalties for certain violations and identify criteria that we consider when determining the appropriate penalty in any given case.⁹ Under these guidelines, we may adjust a forfeiture upward for violations that are egregious, intentional, or repeated, or that cause substantial harm or generate substantial economic gain for the violator.¹⁰

6. Section 1.80(b) of the Rules sets a base forfeiture of \$1,000 for failure to provide station identification.¹¹ We have discretion, however, to depart from these guidelines, taking into account the particular facts of each individual case.¹² After applying the *Forfeiture Policy Statement*, Section 1.80 of the Rules, and the statutory factors, we propose a total forfeiture of \$1,000, for which Mr. Tolassi is apparently liable.¹³

⁵ *Id.*

⁶ 47 U.S.C. § 503(b).

⁷ See 47 U.S.C. § 503(b)(2)(D); 47 C.F.R. § 1.80(b)(7). These amounts reflect inflation adjustments to the forfeitures specified in Section 503(b)(2)(D) (\$10,000 per violation or per day of a continuing violation and \$75,000 per any single act or failure to act). The Federal Civil Penalties Inflation Adjustment Act of 1990, Pub. L. No. 101-410, 104 Stat. 890, as amended by the Debt Collection Improvement Act of 1996, Pub. L. No. 104-134, Sec. 31001, 110 Stat. 1321, requires the Commission to adjust its forfeiture penalties periodically for inflation. See 28 U.S.C. § 2461 note (4). The Commission most recently adjusted its penalties to account for inflation in 2013. See *Amendment of Section 1.80(b) of the Commission’s Rules, Adjustment of Civil Monetary Penalties to Reflect Inflation*, Order, 28 FCC Rcd 10785 (Enf. Bur. 2013); see also *Inflation Adjustment of Monetary Penalties*, 78 Fed. Reg. 49,370-01 (Aug. 14, 2013) (setting Sept. 13, 2013, as the effective date for the increases).

⁸ 47 U.S.C. § 503(b)(2)(E).

⁹ 47 C.F.R. § 1.80(b)(8), Note to paragraph (b)(8).

¹⁰ *Id.*

¹¹ 47 C.F.R. § 1.80(b).

¹² *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, 17098–99, para. 22 (1997) (noting that “[a]lthough we have adopted the base forfeiture amounts as guidelines to provide a measure of predictability to the forfeiture process, we retain our discretion to depart from the guidelines and issue forfeitures on a case-by-case basis, under our general forfeiture authority contained in Section 503 of the Act”) (*Forfeiture Policy Statement*), *recons. denied*, Memorandum Opinion and Order, 15 FCC Rcd 303 (1999).

¹³ See *Ronald E. Sauer*, Notice of Apparent Liability for Forfeiture, NAL/Acct. No. 200332360006 (Enf. Bur. rel. May 6, 2003) (proposing \$1,000 forfeiture for repeated failure to identify Amateur station), *Scott E. Kamm*, Notice of Apparent Liability for Forfeiture, NAL/Acct. No. 200332560008 (Enf. Bur. rel. Jan. 24, 2003) (same).

IV. ORDERING CLAUSES

7. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Act¹⁴ and Sections 1.80 of the Rules,¹⁵ David J. Tolassi is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of one thousand dollars (\$1,000) for repeated violations of Section 97.119(a) of the Rules.¹⁶

8. **IT IS FURTHER ORDERED** that, pursuant to Section 1.80 of the Rules,¹⁷ within thirty (30) calendar days of the release date of this Notice of Apparent Liability for Forfeiture, David J. Tolassi **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture consistent with paragraph 11 below.

9. 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. David J. Tolassi shall send electronic notification of payment to SCR-Response@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.¹⁸ 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 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 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.

10. 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 20554.¹⁹ Questions regarding payment procedures should be directed to the Financial Operations Group Help Desk by phone, 1-877-480-3201, or by e-mail, ARINQUIRIES@fcc.gov.

11. 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

¹⁴ 47 U.S.C. § 503(b).

¹⁵ 47 C.F.R. § 1.80.

¹⁶ 47 C.F.R. § 97.119(a).

¹⁷ 47 C.F.R. § 1.80.

¹⁸ An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

¹⁹ See 47 C.F.R. § 1.1914.

to Sections 1.16 and 1.80(f)(3) of the Rules.²⁰ The written statement must be mailed to the Federal Communications Commission, Enforcement Bureau, South Central Region, Atlanta Office, 3575 Koger Blvd, Suite 320, Duluth, GA 30096, and must include the NAL/Account Number referenced in the caption. The statement must also be e-mailed to SCR-Response@fcc.gov.

12. 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; 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.

13. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture shall be sent by first class mail and certified mail, return receipt requested, to David J. Tolassi at his address of record.

FEDERAL COMMUNICATIONS COMMISSION

Douglas Miller
District Director
Atlanta Office
South Central Region
Enforcement Bureau

²⁰ 47 C.F.R. §§ 1.16, 1.80(f)(3).