

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

In the Matter of)	
)	
Daniel R. Hicks)	File No.: EB-FIELDNER-14-00014634
)	NAL/Acct. No.: 201532360002
Licensee of Amateur Radio Station KB8UYZ)	FRN: 0008996514
Cincinnati, Ohio)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: August 20, 2015

Released: August 20, 2015

By the District Director, Detroit Office, Northeast Region, Enforcement Bureau:

I. INTRODUCTION

1. We propose a penalty of \$8,000 against Daniel R. Hicks for intentionally causing interference to other amateur radio operators and failing to provide his proper station identification. Amateur radio frequencies are shared and licensees may not monopolize any frequency for their exclusive use. Deliberate interference undermines the utility of the Amateur Radio Service by preventing communications among licensed users that comply with the Commission's Rules. In addition, the failure to transmit a licensee's assigned call sign information disrupts the orderly administration of the Amateur Radio Service by preventing licensed users from identifying a transmission's source.

2. In this Notice of Apparent Liability for Forfeiture (NAL), we find that Mr. Hicks, licensee of Amateur Radio Station KB8UYZ in Cincinnati, Ohio, apparently willfully violations Section 333 of the Communications Act of 1934, as amended (Act), and Sections 97.101(d) and 97.119(a) of the Commission's rules (Rules) by causing intentional interference to licensed radio operations and failing to transmit his assigned call sign in the Amateur Radio Service.¹

II. BACKGROUND

3. From April 7-9, 2014, in response to multiple complaints of interference, an agent from the Enforcement Bureau's Detroit Office (Detroit Office) used mobile direction finding techniques in an attempt to identify the source of the radio transmissions. The agent, working with a local amateur group which included Mr. Hicks, was unable to locate the source of the transmissions.

4. On March 3, 2015, in response to continued complaints of interference, an agent from the Detroit Office returned to the Cincinnati area to again attempt to identify the source of the transmissions. This time the agent did not advise the local amateur radio group that he was in the area. The agent used mobile direction finding techniques to locate the source of the transmissions to 4472 Forest Trail, Cincinnati, Ohio, the address of record for Mr. Hicks' amateur station KB8UYZ. The agent monitored the transmissions emanating from Mr. Hicks' station for approximately one (1) hour and heard his station transmit several prerecorded messages. These transmissions prevented other amateur licensees from communicating over the frequency. During the monitoring period, the agent did not hear Mr. Hicks transmit his assigned call sign. The transmissions used the call sign of another licensee.

¹ 47 U.S.C. §333, 47 C.F.R. §§ 97.101(d), 97.119(a).

III. DISCUSSION

5. 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.² 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.³ 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,⁴ and the Commission has so interpreted the term in the Section 503(b) context.⁵ The Commission may also assess a forfeiture for violations that are merely repeated, and not willful.⁶ The term “repeated” means the commission or omission of such act more than once or for more than one day.⁷

A. Causing Intentional Interference to Licensed Communications

6. We find that the evidence in this case is sufficient to establish that Mr. Hicks willfully and repeatedly violated Section 333 of the Act and Section 97.101(d) of the Rules. Section 333 of the Act states that “[n]o person shall willfully or maliciously interfere with or cause interference to any radio communications of any stations licensed or authorized by or under the Act or operated by the United States Government.”⁸ The legislative history for Section 333 of the Act identifies willful and malicious interference as “intentional jamming, deliberate transmission on top of the transmissions of authorized users already using specific frequencies in order to obstruct their communications, repeated interruptions, and the use and transmission of whistles, tapes, records, or other types of noisemaking devices to interfere with the communications or radio signals of other stations.”⁹ Section 97.101(d) of the Rules states that “[n]o amateur operator shall willfully or maliciously interfere with or cause interference to any radio communication or signal.”¹⁰

² 47 U.S.C. § 503(b).

³ 47 U.S.C. § 312(f)(1).

⁴ 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.”).

⁵ See, e.g., *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388, para. 5 (1991), *recons. denied*, 7 FCC Rcd 3454 (1992).

⁶ 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).

⁷ 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, para. 9.

⁸ 47 U.S.C. § 333.

⁹ H.R. Rep. No. 101-316, at 8 (1989).

¹⁰ 47 C.F.R. § 97.101(d). See 47 C.F.R. § 97.101(a) (stating that “each amateur radio station must be operated in accordance with good engineering and good amateur practice”).

7. On March 5, 2015, an agent from the Detroit Office located the source of interference to the address of record for Mr. Hicks' amateur station, KB8UYZ. The agent heard Mr. Hicks' amateur radio station intentionally interfering with other amateur licensees by transmitting a prerecorded message and a false call sign. These transmissions were a deliberate act to prevent other amateur radio operators from conducting legitimate communications. Based on the evidence before us, we find that Mr. Hicks apparently and willfully violated Section 333 of the Act and Section 97.101(d) of the Rules by intentionally interfering with other licensed amateur radio communications.

B. Failure to Transmit a Legitimate Call Sign Identification

8. The evidence in this case also is sufficient to establish that Mr. Hicks violated Section 97.119(a) of the Rules. 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.” Section 97.119(a) further states that “[n]o station may transmit . . . any call sign not authorized to the station.”¹¹ On March 5, 2015, an agent from the Detroit Office monitored several frequencies for approximately one (1) hour and heard transmissions from Mr. Hicks' station in which he failed to transmit his assigned call sign. Instead, the transmissions were identified with the call sign assigned to another amateur radio operator. Based on the evidence before us, we find that Mr. Hicks apparently willfully violated Section 97.119(a) of the Rules by failing to transmit his assigned call sign.

C. Proposed Forfeiture

9. 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 the base forfeiture amount for failure to provide station identification is \$1,000.¹² We retain the discretion, however, to issue a higher or lower forfeiture than provided in the *Forfeiture Policy Statement* or to apply alternative or additional sanctions as permitted by statute, subject to the statutory cap.¹³ In assessing the monetary forfeiture amount, we must 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.¹⁴

10. Therefore, applying the *Forfeiture Policy Statement*, Section 1.80 of the Rules, and the statutory factors to the instant case, we conclude that Mr. Hicks is apparently liable for a forfeiture in the amount of eight thousand dollars (\$8,000).

IV. ORDERING CLAUSES

11. 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 of the Rules, Daniel R. Hicks is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of eight thousand dollars (\$8,000) for

¹¹ 47 C.F.R. § 97.119(a).

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 (1997) (*Forfeiture Policy Statement*), *recons. denied*, 15 FCC Rcd 303 (1999); 47 C.F.R. § 1.80.

¹³ 47 C.F.R. § 1.80(b)(8), Note (“The Commission and its staff retain the discretion to issue a higher or lower forfeiture than provided in the guidelines, to issue no forfeiture at all, or to apply alternative or additional sanctions as permitted by statute.”).

¹⁴ 47 U.S.C. § 503(b)(2)(E).

willful and repeated violations of Section 333 of the Act and Sections 97.101(d), and 97.119(a) of the Rules.¹⁵

12. **IT IS FURTHER ORDERED** that, pursuant to Section 1.80 of the Rules, within thirty (30) calendar days of the release date of this Notice of Apparent Liability for Forfeiture, Daniel R. Hicks **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.¹⁶

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. Daniel R. Hicks shall also send electronic notification on the date said payment is made to NER-Response@fcc.gov. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted.¹⁷ 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.

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, S.W., Room 1-A625, Washington, D.C. 20554.¹⁸ 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.

15. 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.¹⁹ Mail the written statement to Federal Communications Commission, Enforcement Bureau, Northeast Region, Detroit Office, 24897 Hathaway Street, Farmington

¹⁵ 47 U.S.C. §§ 333, 503(b); 47 C.F.R. §§ 0.111, 0.204, 0.311, 0.314, 1.80, 97.101(d), and 97.119(a).

¹⁶ 47 C.F.R. § 1.80.

¹⁷ An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

¹⁸ See 47 C.F.R. § 1.1914.

¹⁹ 47 C.F.R. §§ 1.16, 1.80(f)(3).

Hills, Michigan 48335, and include the NAL/Acct. No. referenced in the caption. The statement must also be e-mailed to NER-Response@fcc.gov.

16. 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 principles (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.

17. **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 Daniel R. Hicks at his address of record.

FEDERAL COMMUNICATIONS COMMISSION

James Bridgewater
District Director
Detroit Office
Northeast Region
Enforcement Bureau