

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

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| In the Matter of |) | |
| |) | |
| William F. Crowell |) | File No.: EB-FIELDWR-15-00019827 |
| |) | NAL/Acct. No.: 201632960001 |
| Licensee of Amateur Radio Station W6WBJ |) | FRN: 0014454912 |
| Diamond Springs, California |) | |

FORFEITURE ORDER

Adopted: August 1, 2016

Released: August 2, 2016

By the Director, Office of the Field Director, Enforcement Bureau:

I. INTRODUCTION

1. We impose a penalty of \$25,000 against William F. Crowell for operating an amateur station in violation of Section 333 of the Communications Act¹ and Sections 97.101(d) and 97.113(a)(4) of the Commission's rules,² by intentionally causing interference to other amateur radio operators and transmitting prohibited communications, including music. The penalty represents the full amount proposed in the Notice of Apparent Liability for Forfeiture (*NAL*), and is based on the full base forfeiture amount as well as an upward adjustment reflecting Mr. Crowell's decision to continue his misconduct after being warned that his actions violated the Communications Act and the Commission's rules.³

2. Deliberate interference undermines the utility of the Amateur Radio Service by preventing communications among licensed users who comply with the Commission's Rules. Mr. Crowell's deliberate interference to other users, using voice, noises and music, directly contravenes the Amateur Radio Service's fundamental purpose as a voluntary noncommercial communications service to contribute to the advancement of radio art, expand the existing reservoir of trained operators, technicians, and electronic experts, and continue the amateur's unique ability to enhance international goodwill. Mr. Crowell does not deny that he made the transmissions that prompted the *NAL* in this proceeding, but argues, in large part, that those transmissions were protected by the First Amendment of the Constitution.⁴ After reviewing Mr. Crowell's arguments, we find no reason to cancel, withdraw, or reduce the forfeiture penalty proposed in the *NAL*.

II. BACKGROUND

3. 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."⁵ The legislative history for Section 333 of the Act

¹ 47 U.S.C. § 333.

² 47 C.F.R. §§ 97.101(d), 97.113(a)(4).

³ *William F. Crowell*, Notice of Apparent Liability for Forfeiture, 30 FCC Rcd 14267 (Enf. Bur., Western Region, San Francisco Office, 2015) (*NAL*).

⁴ Letter from William F. Crowell to David Hartshorn, District Director, San Francisco Office, Western Region, Enforcement Bureau, Federal Communications Commission (dated Jan. 15, 2016) (Crowell *NAL* Response).

⁵ 47 U.S.C. § 333.

explains that willful and malicious interference is “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.”⁶ 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.”⁷ Section 97.113(a)(4) of the Rules states that “[n]o amateur station shall transmit . . . [m]usic using a phone emission except as specifically provided elsewhere in this section.”⁸

4. On August 25 and 27, 2015, in response to multiple complaints of interference, primarily from members of the Western Amateur Radio Friendship Association (WARFA),⁹ Field Agents from the Enforcement Bureau’s (Bureau’s) Western Region and the Commission’s High Frequency Direction Finding (HFDF) Center conducted investigations using mobile direction-finding techniques to find the source of the interference.¹⁰ During these investigations, the Agents and the HFDF Center observed Mr. Crowell’s amateur radio station intentionally interfering with other amateur licensees by transmitting on top of other amateurs, and repeatedly interrupting amateurs using noises on the WARFA net, recordings and music, so as to not allow them to transmit on 3908 kHz.¹¹ Specifically, between 7:45 P.M. and 9:45 P.M. PDT, on both August 25 and August 27, the Agents and the HFDF Center observed at least a dozen instances, lasting from thirty seconds to at least four minutes each, of Mr. Crowell intentionally transmitting on top of and repeatedly interrupting amateurs on the WARFA net.¹² Based on those investigations, the Bureau found that Mr. Crowell had apparently willfully and repeatedly violated the Act and the rules, by intentionally causing interference to other amateur radio operators, transmitting on top of other operators, and transmitting prohibited communications and emissions, including music, at 3908 kHz.¹³

5. On December 18, 2015, the Bureau released the *NAL* in this proceeding, proposing a \$25,000 forfeiture against Mr. Crowell for apparent violations of Section 333 of the Act and Sections 97.101(d) and 97.113(a)(4) of the rules. Specifically, the *NAL* proposed a forfeiture of \$7,000 for the interference observed on each day of investigation, and \$4,000 for the unauthorized emissions on each day, for a total of \$22,000.¹⁴ The Bureau also found that an upward adjustment of \$3,000 appeared to be warranted, because Mr. Crowell continued to cause interference after being warned that such conduct violated the Commission’s rules.¹⁵

⁶ H.R. Rep. No. 101-316, at 8 (1989).

⁷ 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”).

⁸ 47 C.F.R. § 97.113(a)(4).

⁹ *NAL*, 30 FCC Rcd at 14267-68, para. 3. WARFA operates a “net” that meets three times a week at 3908 kHz. *See NAL*, 30 FCC at 14267 n.3. In the context of the amateur service, a net or a network is a group of amateur radio stations that share some common interest and exchange messages among themselves. *Uses and Capabilities of Amateur Radio Service Communications in Emergencies and Disaster Relief: Report to Congress Pursuant to Section 6414 of The Middle Class Tax Relief and Job Creation Act of 2012*, Report, 27 FCC Rcd 10039, 10041 n.21 (WTB and PSHSB, 2012).

¹⁰ *NAL*, 30 FCC Rcd at 14267-68, para. 3.

¹¹ *NAL*, 30 FCC Rcd at 14268-69, para. 7.

¹² *NAL*, 30 FCC Rcd at 14268-69, para. 7.

¹³ *NAL*, 30 FCC Rcd at 14269-70, para. 7.

¹⁴ *NAL*, 30 FCC Rcd at 14271, para. 10.

¹⁵ *NAL*, 30 FCC Rcd at 14271, para. 10.

6. On January 15, 2015, Mr. Crowell filed a response to the *NAL*. Mr. Crowell later filed several supplements to his response.¹⁶ As discussed in detail below, Mr. Crowell admits making the transmissions cited in the *NAL*, but maintains that those transmissions were either protected by the Constitution or justified on the basis of other operators' actions. Alternatively, Mr. Crowell maintains that someone else caused the interference or transmitted prohibited communications at issue in this proceeding.

III. DISCUSSION

A. Jamming

1. Background

7. As noted above, 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.”¹⁷ Similarly, 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.”¹⁸ Mr. Crowell has not raised any argument that warrants cancellation or reduction of the proposed forfeiture amount.

2. Freedom of Speech

8. *Background.* Mr. Crowell also asserts that the *NAL* was directed toward the content of his transmissions, and that it therefore violates the First Amendment.¹⁹ For example, in the *NAL*, the Bureau found that Mr. Crowell apparently willfully and repeatedly violated the Communications Act and the Commission's Rules, by causing intentional interference to licensed radio operations and using music as part of his interfering transmissions.²⁰ Mr. Crowell responds that repetitive transmissions are speech that is protected by the First Amendment.²¹ Mr. Crowell also claims that this alleged restriction on repetitive transmissions should be found to be void for vagueness, because the Commission has not provided adequate notice on how much repetition is unreasonable.²²

9. Mr. Crowell argues further that the Bureau characterized his transmissions as jamming or interference because it does not like what he wants to say.²³ In response, Mr. Crowell maintains that, because his transmissions are protected by the Freedom of Speech clause of the First Amendment, they cannot be prohibited as jamming.²⁴ He argues further that, because the *NAL* was unconstitutional, it exceeded the Commission's statutory authority.²⁵ Mr. Crowell states that the U.S. Government cannot

¹⁶ Mr. Crowell's supplements are listed in Appendix A to this Forfeiture Order.

¹⁷ 47 U.S.C. § 333.

¹⁸ 47 C.F.R. § 97.101(d).

¹⁹ Crowell *NAL* Response at 1.

²⁰ *NAL*, 30 FCC Rcd at 14267, para. 2, *citing* 47 U.S.C. § 333, 47 C.F.R. §§ 97.101(d), 97.113(a)(4). *See also* 47 U.S.C. § 503(b)(1)(A) (giving the Commission authority to impose forfeiture penalties for “willfully and or repeatedly” violating the Communications Act or the Commission's rules).

²¹ Crowell *NAL* Response at 5.

²² Crowell *NAL* Response at 6.

²³ Crowell *NAL* Response at 1-2, 28.

²⁴ Crowell *NAL* Response at 1-2, 23.

²⁵ Crowell *NAL* Response at 21-22, 25; Crowell Supplement.

condition the grant of a license on “an unconstitutional premise.”²⁶ Finally, Mr. Crowell asserts that the *NAL* is censorship, and so is inconsistent with Section 326 of the Act.²⁷

10. *Discussion.* As an initial matter, to the extent that Mr. Crowell believes that the Bureau adopted the *NAL* merely because his transmissions were repetitive, he misunderstands the *NAL*. The Bureau adopted the *NAL* in part because some of Mr. Crowell’s transmissions caused intentional interference to licensed radio operations, and because he made those interfering transmissions on a willful and repeated basis.²⁸ To the extent that Mr. Crowell contends that the Commission has not provided adequate notice on the meaning of “repeatedly,” we disagree. We have explained on many occasions that, for purposes of Section 503(b), the term “repeated” means the commission or omission of any act more than once or for more than one day.²⁹

11. Mr. Crowell is mistaken in assuming that the violations of Section 333 of the Act and Section 97.101(d) alleged in the *NAL* were based on the content of his transmissions. Rather, the *NAL* was clear that these violations resulted from the manner in which he made his transmissions.³⁰ Specifically, our Field Agents observed Mr. Crowell intentionally interfering with other amateur licensees, by transmitting on top of other amateurs attempting to transmit, and repeatedly interrupting other amateurs using noises, recordings and music, so as to not allow them to transmit on 3908 kHz.³¹ This is precisely the kind of behavior that Congress sought to prohibit when it adopted Section 333 of the Act.³²

12. Further, if there were any merit in Mr. Crowell’s contention that the prohibition on willful and malicious interference is a content-based restriction of speech, he would still be mistaken in asserting that the restriction violates the Freedom of Speech clause of the First Amendment, or constitutes censorship in violation of Section 326 of the Act. It is well-established that regulation of radio in general does not violate the First Amendment or Section 326,³³ and courts have made clear that this conclusion

²⁶ Crowell *NAL* Response at Cover Letter, citing *West Virginia Bd. of Ed. v. Barnette*, 319 U.S. 624, 642 (1943) (*Barnette*); *Rust v. Sullivan*, 500 U.S. 173, 212-15 (1991) (*Rust*); *Dolan v. City of Tigard*, 512 U.S. 374 (1994) (*Dolan*).

²⁷ Crowell *NAL* Response at 4.

²⁸ *NAL*, 30 FCC Rcd at 14267, para. 2. Mr. Crowell further asserts that WARFA net’s transmissions were as repetitive as his were. Crowell *NAL* Response at 5. Because the forfeiture penalty proposed in the *NAL* was not based on the repetition of transmissions *per se*, we need not reach the issue of whether Mr. Crowell’s transmissions were more or less repetitive than transmissions by WARFA net’s members.

²⁹ 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.*, Notice of Apparent Liability for Monetary Forfeiture, 16 FCC Rcd 1359, 1362, para. 9 (2001), cited in *NAL*, 30 FCC Rcd at 14268-69, para. 5.

³⁰ *NAL*, 30 FCC Rcd at 14269-70, para. 7. The *NAL* mentioned that Mr. Crowell’s interfering transmissions included racial, ethnic, and sexual slurs and epithets, but this was in the context of background information, not in the context of an apparent rule violation. *NAL*, 30 FCC Rcd at 14268, para. 3.

³¹ *NAL*, 30 FCC Rcd at 14269-70, para. 7.

³² The *NAL* noted that, in the legislative history for Section 333, Congress described “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.” *NAL*, 30 FCC Rcd at 14269, para. 6, quoting H.R. Rep. No. 101-316, at 8 (1989).

³³ See, e.g., *National Broadcasting Co. v. United States*, 319 U.S. 190, 226 (1943) (*NBC*).

applies to the amateur service as well.³⁴ Accordingly, Mr. Crowell misplaces his reliance on the Freedom of Speech clause of the First Amendment. Moreover, to the extent that Mr. Crowell believes that his license has been conditioned on “an unconstitutional premise,”³⁵ that belief is not supported by the cases he cites.³⁶

3. Checking In

13. Mr. Crowell argues for a number of reasons that the interference he caused was justified because WARFA net would not let him “check in,” or participate in their conversations. For reasons discussed in detail below, we reject those arguments.

a. Right to Check In

14. *Background.* Section 97.101(b) of the Commission’s rules reads as follows:

Each station licensee and each control operator must cooperate in selecting transmitting channels and in making the most effective use of the amateur service frequencies. No frequency will be assigned for the exclusive use of any station.

Mr. Crowell claims that WARFA net monopolizes the frequency, and refuses to let Mr. Crowell check in.³⁷ According to Mr. Crowell, this constitutes violation of Section 97.101(b) of the Commission’s rules.³⁸ Mr. Crowell argues further that such a violation provides justification for his conduct, because it

³⁴ *Gross v. FCC*, 480 F.2d 1288, 1291 (2d Cir. 1973)(*Gross*), quoting *NBC*, 319 U.S. at 226. Mr. Crowell claims that the Field Agents that inspected his station asserted incorrectly that the Commission is not subject to the Constitution. Crowell *NAL* Response at 22, Crowell June 29 e-mail. During that inspection, the Field Agents advised Mr. Crowell that causing harmful interference and playing music were violations of the Part 97 rules, without mentioning the Constitution specifically. However, even if the Field Agents had asserted that the Commission was not subject to the Constitution, we note that the Bureau did not rely on any such assertion in the *NAL*, and we do not rely on any such assertion now. Accordingly, Mr. Crowell’s claim regarding the Field Agents’ advice during the station inspection is not relevant to in this proceeding.

³⁵ Crowell *NAL* Response at Cover Letter.

³⁶ The cases on which Mr. Crowell bases his “unconstitutional premise” assertion are not on point, in that none of those cases address whether prohibiting a Commission licensee from causing willful or malicious interference to other licensees is an unconstitutional restriction on speech. In fact, one of the cases cited by Mr. Crowell, *Dolan*, does not appear to address freedom of speech at all, but rather focuses on an eminent domain issue. *Dolan*, 512 U.S. 374. Moreover, one of Mr. Crowell’s cases seems to reject arguments similar to the one he makes here. In *Rust*, the majority opinion found that restricting government funding for facilities that advocate abortion as a method of family planning is *not* an unconstitutional restriction on the First Amendment rights of the employees of the facilities otherwise eligible to receive such funding. *Rust*, 500 U.S. at 192-96. There is nothing in the majority opinion in *Rust* that could be interpreted as providing any support for Mr. Crowell’s assertion that prohibiting amateur licensees from causing willful or malicious interference might violate the First Amendment. (Mr. Crowell cites a dissenting opinion in *Rust* in support of his assertion.)

³⁷ Crowell *NAL* Response at 6, 13-14, 17-20, 28, Crowell February 14 E-mail. *See also* Crowell *NAL* Response at 26 (criticizing WARFA net for failing to allow everyone to check in to its net, and claiming that such failure is a violation of Section 97.101(b)); Crowell April 15 E-mail (forwarding an e-mail from a third party to the Commission, in which the third party criticizes members of WARFA net for not allowing him to check in); Crowell April 27 E-mail (forwarding an e-mail from another third party to the Commission, criticizing members of WARFA net for not allowing him to check in); Crowell December 31 E-mail (recommending that the Bureau discuss this issue with a former Commission employee who was precluded from checking into a net in 1982).

³⁸ Crowell *NAL* Response at 5, First Crowell January 21 E-mail. Mr. Crowell claims further that WARFA net’s violation of Section 97.101(b) is motivated by its opposition to his speech, and criticizes the Commission because it has not taken action against the alleged WARFA net violations. Crowell *NAL* Response at 6-7.

constitutes a waiver of WARFA net's right to be protected from interference.³⁹ Alternatively, Mr. Crowell maintains that he was exercising "self-policing," in order to prevent WARFA net from further violating Section 97.101(b).⁴⁰ As another legal theory, Mr. Crowell likens an amateur license to a form of contract between the licensee and the U.S. Government,⁴¹ and argues that WARFA net breached its contract by refusing to let him check in, and that such a breach relieves other licensees from any obligation to cooperate with it.⁴²

15. *Discussion.* As an initial matter, Mr. Crowell is mistaken in assuming that Section 97.101(b) gives him a right to check in to any net, or that it places an obligation on operators of nets to let anyone check in. Section 97.101(b) gives all amateur licensees the right to operate on any amateur frequency, provided that there are no other licensees that are already using the frequency. At least one federal court has found that transmitting without first finding a clear channel is "patently inconsistent with the plain language of 47 C.F.R. § 97.101(b) requiring cooperation among amateur radio licensees."⁴³ That court explained further that, "[a]s a matter of law, any conscious and deliberate interference with other ongoing communications caused by those transmissions constitutes a willful violation for which [the licensee] is subject to forfeiture penalties."⁴⁴ Thus, Section 97.101(b) does not give Mr. Crowell or any other amateur operator authority to interrupt ongoing transmissions, for purposes of checking in to a net or for any other reason. On the contrary, Section 97.101(b) prohibits such transmissions.

16. In addition, by trying to check in when another operator was transmitting, Mr. Crowell caused harmful interference to other amateur operators in violation of Section 97.101(d). Mr. Crowell's contention that his transmissions were justified because he was trying to check in to a net was considered and rejected by the Commission. Specifically, in the *Paroli Review Order*, the Commission confirmed a Compliance and Information Bureau Order that concluded that interference caused while trying to check in to a net violates Section 97.101(d).⁴⁵

17. Mr. Crowell's argument that WARFA net's participants waived their right to be protected from interference has no merit. As an initial matter, as noted above, Mr. Crowell is mistaken in assuming that WARFA net violated the Commission's rules by refusing to allow him to check in. Furthermore, even if WARFA net had violated a Commission rule, that would not by itself justify the interference that Mr. Crowell caused. Section 97.101(d) prohibits all amateur licensees from causing harmful interference, and does not provide any exception for interference caused to other amateurs whom the interferer believes have violated a Commission rule. Third, the operating authority conferred by a Commission license is subject to the Communications Act and the Commission's rules. Such licenses are not contracts, and so are not subject to contract law concepts such as "breach of contract." As a result, Mr. Crowell's contention that a licensee's rule violation could cause an immediate modification of its operating authority is unfounded. The Commission can modify an amateur license, but only pursuant to the

³⁹ Crowell *NAL* Response at 5, 7, 18.

⁴⁰ Crowell *NAL* Response at 6.

⁴¹ Crowell *NAL* Response at 5, 6, 19.

⁴² Crowell *NAL* Response at 5.

⁴³ *United States v. Baxter*, 841 F.Supp.2d 378, 395 (D.Me. 2012) (*Baxter*), judgment *aff'd*, Docket No. 12-1196 (1st Cir., Sept. 10, 2012) (*internal quotations omitted*).

⁴⁴ *Baxter*, 841 F.Supp.2d at 395, citing, e.g., 47 C.F.R. § 97.101(d).

⁴⁵ *Vernon A. Paroli Amateur Radio Station KA5OWW, Order*, 10 FCC Rcd 7596 (Compliance and Information Bur., 1995) (*Paroli Order*), *aff'd* *Vernon A. Paroli Amateur Radio Station KA5OWW*, Memorandum Opinion and Order, 11 FCC Rcd 3055 (1996) (*Paroli Review Order*).

procedure set forth in Section 316 of the Communications Act and Section 97.27 of the Commission's rules.⁴⁶

18. Finally, Mr. Crowell argues that he was practicing "self-policing" in order to prevent WARFA net from further violating Section 97.101(b).⁴⁷ This argument is unpersuasive for two reasons. First, as explained above, WARFA net has not violated Section 97.101(b). Second, Mr. Crowell is incorrect that his harmful interference can be justified as "self-policing." While use of amateur volunteers for the purpose of monitoring violations in the amateur service is permitted by the Communications Act,⁴⁸ the Act prohibits such volunteers from doing anything other than monitoring and reporting to the Commission: "Nothing in this clause shall be construed to grant individuals recruited and trained under this subparagraph any authority to issue sanctions to violators or to take any enforcement action other than any action which the Commission may prescribe by rule."⁴⁹

b. Freedom of Association

19. *Background.* In addition to Mr. Crowell's assertions addressed above, that Section 97.101(b) obligated WARFA net to allow him to check in, he contends that he has a right to check in that is protected by the Freedom of Association Clause of the First Amendment to the U.S. Constitution.⁵⁰

20. *Discussion.* The case that Mr. Crowell cites in support of his freedom of association argument is not on point. In *NAACP v. Alabama*, at issue was whether the National Association for the Advancement of Colored People (NAACP) was in compliance with the State of Alabama's foreign corporation registration statute. In the context of a state court proceeding addressing that issue, the Alabama State Court directed the NAACP to disclose the names and addresses of its members in Alabama. The NAACP refused, and the Alabama State Court found the NAACP to be in contempt.⁵¹ The U.S. Supreme Court found that requiring the NAACP to disclose the names and addresses of its members could entail the likelihood of a substantial restraint upon the exercise by those members of their right to freedom of association.⁵² The Supreme Court found further that the State of Alabama had not demonstrated an interest in the disclosures of member names and addresses sufficient to justify the potential restraint of the members' exercise of their right of association, because the member names and

⁴⁶ 47 U.S.C. § 316, 47 C.F.R. § 97.27.

⁴⁷ Crowell *NAL* Response at 6.

⁴⁸ In fact, the amateur radio community has distinguished itself for its self-policing operations. See H.R. Rep. No. 765, 97th Cong., 2d Sess. 19 (1982) (Commission reporting to Congress the success of amateur self-monitoring efforts); cited in *Paroli Order*, 10 FCC Rcd at 7596, para. 7.

⁴⁹ 47 U.S.C. § 154(f)(4)(C).

⁵⁰ Crowell *NAL* Response at 26. Mr. Crowell also asserts that his right to freedom of association is protected by the 14th Amendment. Crowell *NAL* Response at 28, citing *NAACP v. Alabama*, 357 U.S. 449 (1958). However, he also argues that 14th Amendment does not apply to the Federal government, but contends that his right to freedom of association should be protected from Federal government action as well. Crowell *NAL* Response at 28. Mr. Crowell's right to freedom of association is protected from infringement by the Federal Government by the First Amendment. To the extent that Mr. Crowell argues that the Fourteenth Amendment is implicated in this proceeding, he is mistaken. However, whether his right is protected by the Fourteenth or the First Amendment is not relevant to his substantive argument, that his transmissions are justified as an exercise of right to freedom of association as discussed in *NAACP v. Alabama*. We address this argument below.

⁵¹ *NAACP v. Alabama*, 357 U.S. at 451-54.

⁵² *NAACP v. Alabama*, 357 U.S. at 462-63.

addresses to be disclosed did not have a substantial bearing on whether the NAACP was in compliance with Alabama's foreign corporation registration statute.⁵³

21. *NAACP v. Alabama* is not relevant to this proceeding. There is nothing in the Bureau's *NAL* that would require Mr. Crowell to disclose publicly any personal information. Moreover, there is nothing in that case that is relevant to determining whether the Section 333 prohibition on harmful interference can reasonably be interpreted as a restraint on Mr. Crowell's right of association, or, if it can, whether there is any government interest sufficient to justify any such restraint. Accordingly, Mr. Crowell has failed to provide adequate support for his contention that the harmful interference he caused can be excused as an exercise of his First Amendment freedom of association rights.

c. Freedom Not to Associate

22. *Background.* In addition, Mr. Crowell asserts that WARFA net is asserting a "right not to associate" by refusing to allow him to check in, and that such a right is not protected by the First Amendment.⁵⁴

23. *Discussion.* Mr. Crowell's argument is not relevant to the conclusion we reached above. In other words, we found above that the record in this proceeding does not support Mr. Crowell's assertion that the Freedom of Association clause of the First Amendment authorizes him to cause harmful interference to the participants in WARFA net, and the state of the record is not affected by whether or to what extent those participants' "right not to associate" is constitutionally protected.

24. Moreover, Mr. Crowell overstates his case by arguing that WARFA net has "no right not to associate with [him] that the federal government may recognize."⁵⁵ Contrary to Mr. Crowell's contention, the Supreme Court in *Roberts* recognized that there is a constitutionally protected "right not to associate":

There can be no clearer example of an intrusion into the internal structure or affairs of an association than a regulation that forces the group to accept members it does not desire. Such a regulation may impair the ability of the original members to express only those views that brought them together. *Freedom of association therefore plainly presupposes a freedom not to associate.*⁵⁶

Thus, Mr. Crowell did not accurately describe the *Roberts* case on which he relies.

25. Finally, in addition to concluding incorrectly that the Constitution does not recognize a "right not to associate" as a general proposition, Mr. Crowell's *NAL* response could not support a conclusion that the Constitution does not recognize such a right in WARFA net's specific case. The *Roberts* Court noted that the constitutional protection of freedom of association can vary depending on the nature of the association at issue.⁵⁷ The *Roberts* Court also observed that government infringements on this "right not to associate" may be justified by regulations adopted to serve compelling state interests,

⁵³ *NAACP v. Alabama*, 357 U.S. at 463-65.

⁵⁴ Crowell *NAL* Response at 5. See also Crowell *NAL* Response at 22, citing *Roberts v. U.S. Jaycees*, 468 U.S. 609 (1984) (*Roberts*).

⁵⁵ Crowell *NAL* Response at 22.

⁵⁶ *Roberts*, 468 U.S. at 623 (*emphasis added*), citing *Abood v. Detroit Board of Education*, 431 U.S. 209, 234-35 (1977). See also *Roberts*, 468 U.S. at 627, quoting *Democratic Party of United States v. Wisconsin*, 450 U.S. 107, 122 (1981) (recognizing the right of political parties to "protect themselves 'from intrusion by those with adverse political principles'").

⁵⁷ *Roberts*, 468 U.S. at 620-22.

unrelated to the suppression of ideas, that cannot be achieved through means significantly less restrictive of associational freedoms.⁵⁸ However, Mr. Crowell did not discuss the nature of WARFA net with respect to the extent of its right not to associate, nor did it identify any compelling state interest that might justify infringement of WARFA net's right in this case.

d. Equal Protection

26. *Background.* Mr. Crowell claims that adopting the *NAL* was tantamount to giving WARFA net a frequency assignment, contrary to Part 97, and that the alleged award of this assignment was racially motivated.⁵⁹ Mr. Crowell claims further that such a racially motivated frequency assignment would violate the equal protection clauses of the Fifth and Fourteenth Amendments to the Constitution.⁶⁰

27. *Discussion.* As noted above, in *Baxter*, and in the *Paroli Order*, Section 97.101(d) prohibits amateur licensees from causing harmful interference to other licensees' ongoing transmissions.⁶¹ The Bureau issued the *NAL* to Mr. Crowell in part because he appears to have violated this rule.⁶² However, issuing the *NAL* does not preclude Mr. Crowell from operating on the frequency WARFA net's members use when that frequency is clear, nor does it preclude any other licensee from such operations. Thus, contrary to Mr. Crowell's claim, the *NAL* does not constitute a frequency assignment for any member of WARFA net, or for any other amateur licensee. Because the *NAL* does not constitute a frequency assignment, we need not reach Mr. Crowell's allegations of racial motivation, or his equal protection issue.

e. Regulatory Interpretation

28. *Background.* Mr. Crowell claims without explanation that the Commission has unreasonably "interpreted Section 97.101(b) out of existence."⁶³

29. *Discussion.* The Supreme Court has long accorded considerable weight to an administrative agency's construction of a statutory scheme it is entrusted to administer.⁶⁴ When the construction of an administrative regulation rather than a statute is at issue, Courts have determined that

⁵⁸ *Roberts*, 468 U.S. at 623. In *Roberts*, the U.S. Jaycees had a policy limiting its "regular membership" to men between 18 and 35. Women were permitted only "associate membership," a status that did not have voting rights. *Roberts*, 468 U.S. at 612-13. The State of Minnesota determined that this policy violated the Minnesota Human Rights Act. *Roberts*, 468 U.S. at 614-17, quoting Minn.Stat. § 363.03, subd. 3 (1982). The Court in *Roberts* found that Minnesota's interest in adopting its Human Rights Act, preventing discrimination against Minnesotan women, was a compelling state interest that warranted infringement of the Jaycees' freedom of association. *Roberts*, 468 U.S. at 623-24.

⁵⁹ Crowell *NAL* Response at 19.

⁶⁰ Crowell *NAL* Response at 21. See also Crowell *NAL* Response at 26-27, citing *Bolling v. Sharpe*, 347 U.S. 397 (1954), stating that this proceeding raises the question of "to what extent does the 14th Amendment's guarantee of equal protection under the laws apply to the federal government?"

⁶¹ *Baxter*, 841 F.Supp.2d at 395; *Paroli Order*, 10 FCC Rcd at 7596, para. 6.

⁶² *NAL*, 30 FCC Rcd at 14270, para. 8.

⁶³ Crowell *NAL* Response at 6, 20-21, 28. See also Crowell June 29 E-mail, asserting that the Commission's interpretation of Section 97.101(b) is contrary to the plain meaning of the rule, and so it does not warrant judicial deference under *Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 844 (1984) (*Chevron*).

⁶⁴ *Chevron*, 467 U.S. at 844 (1984), citing, e.g., *National Broadcasting Co. v. United States*, 319 U.S. 190 (1943). See also *City of Arlington v. FCC*, ___ U.S. ___, 133 S.Ct. 1863, 1868 (2013), citing *AT & T Corp. v. Iowa Utilities Bd.*, 525 U.S. 366, 397 (1999) ("Statutory ambiguities will be resolved, within the bounds of reasonable interpretation, not by the courts but by the administering agency").

deference is even more clearly in order.⁶⁵ As discussed above, we interpret Section 97.101(b) as prohibiting any amateur operator from transmitting on top of another operator, and this interpretation was affirmed by the Court in *Baxter*.⁶⁶ Mr. Crowell offers only an unsupported assertion that this interpretation does not warrant judicial deference under *Chevron*. This is not a sufficient reason to conclude that the current interpretation of Section 97.101(b) is unreasonable.

4. Selective Prosecution

30. *Background.* Mr. Crowell asserts that the *NAL* was motivated by the Bureau's opposition to the content of his transmissions.⁶⁷ For example, Mr. Crowell seems to assume that the *NAL* was motivated by his criticism of WARFA net's refusal to let him "check in."⁶⁸ Mr. Crowell asserts that others were making similar criticisms on the nights in question, but the Commission's *NAL* singled him out based on an assumption that he was "the ringleader."⁶⁹ Alternatively, Mr. Crowell assumes that the *NAL* was prompted by his broadcasts of racial epithets. While he denies broadcasting any such epithets, he also asserts that the Bureau considers some racial epithets as violative of Part 97 but others as not.⁷⁰ Under a third theory, Mr. Crowell claims that the *NAL* was a retaliatory measure, in response to his claim that amateurs are permitted to broadcast music under Part 97.⁷¹ He also claims that other amateurs broadcast recordings, and that he has been singled out unfairly for his broadcasts.⁷² Mr. Crowell generally accuses the Bureau of having a "closed mind," and of "trying to throw its weight around."⁷³

31. *Discussion.* In summary, Mr. Crowell does not provide a sufficient basis for concluding that the Bureau acted inappropriately in adopting the *NAL*. The Bureau is subject to a "presumption of regularity" that Government agencies have properly discharged their official duties, and to overcome this presumption, Mr. Crowell must provide "clear evidence to the contrary." While Mr. Crowell asserts that he has been singled out unfairly, his assertions do not provide "clear evidence" of the kind needed to overcome the presumption of regularity.

32. With respect to criminal charging decisions, the Supreme Court has made clear that the government's decision "as to whom to prosecute" is generally unreviewable:

This broad discretion rests largely on the recognition that the decision to prosecute is particularly ill-suited to judicial review. Such factors as the strength of the case, the prosecution's general deterrence value, the Government's

⁶⁵ *NARUC v. FCC*, 746 F.2d 1492, 1502 (D.C.Cir.1984) ("[T]he FCC's interpretation of its own policies and regulations is entitled to 'great deference'"), and *Washington Association for Television & Children v. FCC*, 712 F.2d 677, 684 (D.C.Cir.1983) ("[T]his court gives 'great deference' to an agency's interpretation of its own regulations").

⁶⁶ *Baxter*, 841 F.Supp.2d at 395 (Transmitting without first finding a clear channel is "patently inconsistent with the plain language of 47 C.F.R. § 97.101(b).")

⁶⁷ Crowell *NAL* Response at 7-8, 26 (contending that the *NAL* was prompted by the content of Mr. Crowell's communications); Crowell *NAL* Response at 19 (claiming that, by issuing the *NAL*, the Bureau showed its "bias and prejudice" against Mr. Crowell).

⁶⁸ Crowell *NAL* Response at 17. In this order above, we considered and rejected Mr. Crowell's contention that WARFA net's refusal to allow him to check in violated Part 97.

⁶⁹ Crowell *NAL* Response at 17.

⁷⁰ Crowell *NAL* Response at 17.

⁷¹ Crowell *NAL* Response at 24-25. We address Mr. Crowell's arguments regarding amateur broadcasts of music below.

⁷² Crowell *NAL* Response at 25.

⁷³ Crowell *NAL* Response at 22.

enforcement priorities, and the case's relationship to the Government's overall enforcement plan are not readily susceptible to the kind of analysis the courts are competent to undertake.⁷⁴

33. As a result, there is a "presumption of regularity" that supports the Government's prosecutorial decisions. In "the absence of clear evidence to the contrary," courts presume that Government agencies have properly discharged their official duties.⁷⁵ In the ordinary case, "so long as the prosecutor has probable cause to believe that the accused committed an offense defined by statute, the decision whether or not to prosecute, and what charge to file or bring before a grand jury, generally rests entirely in his discretion."⁷⁶ The United States Court of Appeals for the District of Columbia Circuit has also determined that this traditional nonreviewability of prosecutorial decisions applies to administrative cases.⁷⁷

34. Mr. Crowell alleges that the Bureau has failed to prosecute WARFA net when it has engaged in conduct comparable to that discussed in the *NAL*. However, these allegations by themselves are not sufficient to provide clear evidence that the Bureau has not properly discharged its official duties. Therefore, we find that these allegations do not provide a basis for reducing or eliminating the forfeiture amount proposed in the *NAL*.

5. Duration of Transmissions

35. *Background.* Mr. Crowell claims that his transmissions were not of sufficient duration to constitute jamming. He observes that, in a 1982 license renewal proceeding, the *Kerr Initial Decision*, the licensee seeking renewal was found to have played recordings in the amateur service for an extended period of time.⁷⁸ Mr. Crowell distinguishes his transmissions from those discussed in the *Kerr Initial Decision*, claiming that his recordings lasted no longer than 15 seconds each.⁷⁹

36. *Discussion.* Mr. Crowell misinterprets the *Kerr Initial Decision*. Although the *Kerr Initial Decision* noted that the licensee at issue in that proceeding repeatedly made transmissions without a break for period ranging from 29 minutes to three hours,⁸⁰ there is nothing in either the *Kerr Initial Decision* or the *Kerr Review Order* to suggest that causing harmful interference to other amateur operators for periods of time shorter than 29 minutes might be permissible. Moreover, if there were any such conclusion in the *Kerr* proceeding, it would have been superseded by Congress when it adopted Section 333 of the Communications Act in 1989, which, as noted above, prohibits all willful or malicious

⁷⁴ *Wayte v. United States*, 470 U.S. 598, 607 (1985), quoted in *Secretary of Labor v. Twentymile Coal Co.*, 456 F.3d 151, 157 (D.C. Cir. 2006) (*Twentymile Coal*).

⁷⁵ *United States v. Armstrong*, 517 U.S. 456, 465 (1996) (*Armstrong*), quoting *United States v. Chemical Foundation, Inc.*, 272 U.S. 1, 14-15 (1926).

⁷⁶ *Armstrong*, 517 U.S. at 465, quoting *Bordenkircher v. Hayes*, 434 U.S. 357, 364 (1978).

⁷⁷ *Twentymile Coal*, 456 F.3d at 157, quoting *Drake v. FAA*, 291 F.3d 59, 71 (D.C. Cir. 2002) (holding that the "FAA's action in this case was ... analogous to an exercise of 'prosecutorial discretion,'" and noting that "when prosecutorial discretion is at issue, the matter is presumptively committed to agency discretion by law"); *Beverly Health & Rehab. Servs., Inc. v. Feinstein*, 103 F.3d 151, 153 (D.C. Cir. 1996) (holding that the NLRB General Counsel's decision to issue an unfair labor practice complaint is unreviewable because, inter alia, review would "invade the realm of prosecutorial discretion").

⁷⁸ Crowell *NAL* Response at 25-26, citing *Application of Gary W. Kerr for Renewal of Amateur License WA6JIY*, PR Docket No. 81-66; 91 FCC 2d 110 (1982) (*Kerr Initial Decision*). See also *Application of Gary W. Kerr for Renewal of Amateur License WA6JIY*, PR Docket No. 81-66; 91 FCC 2d 107 (1982) (*Kerr Review Order*). Mr. Crowell mistakenly asserts that the transmissions at issue in the *Kerr* proceeding lasted for three days. In fact, those transmissions lasted from 29 minutes to three hours. *Kerr Initial Decision*, 91 FCC 2d at 113-14, para. 14.

⁷⁹ Crowell *NAL* Response at 26.

⁸⁰ *Kerr Initial Decision*, 91 FCC 2d at 113-14, para. 14.

interference. Section 333 does not make exceptions for such willful or malicious interference of less than a particular duration.

6. Denials of Jamming

37. *Background.* As noted above, on August 25 and 27, 2015, Field Agents from the Bureau's Western Region and the HFDF Center observed Mr. Crowell's amateur radio station intentionally interfering with other amateur licensees by transmitting on top of other amateurs, and repeatedly interrupting amateurs using noises on the WARFA net, recordings and music, so as to not allow them to transmit on 3908 kHz.⁸¹ The *NAL* stated that, during the two nights of monitoring 3908 kHz, between 7:45 P.M. and 9:45 P.M. PDT, the Agents and the HFDF Center observed at least a dozen instances per night, lasting from thirty seconds to at least four minutes each, of Mr. Crowell intentionally transmitting on top of and repeatedly interrupting amateurs on the WARFA net.⁸²

38. In addition to arguing that he has a constitutionally protected right to interrupt amateurs on the WARFA net, as discussed in detail above, Mr. Crowell denies making any such interruptions. In particular, Mr. Crowell claims that his transmissions were "short and to the point."⁸³ In response to allegations that noises were made on the frequency in question, Mr. Crowell asserts that they were made by amateur operators participating in WARFA net, and took the form of insults at his expense, or efforts to block him and others from checking into the Net.⁸⁴ Mr. Crowell also asserts that "pile-ups"⁸⁵ are a common occurrence in ham radio, that such "pile-ups" result in unintentional interference, and so do not constitute jamming.⁸⁶ Alternatively, Mr. Crowell denies causing harmful interference, because WARFA net "had nothing to communicate in the first instance."⁸⁷ Mr. Crowell also asserts that WARFA net has no right to be protected from interference, because Part 97 does not provide for such nets.⁸⁸

39. *Discussion.* As an initial matter, Mr. Crowell's transmissions were not "short and to the point," as he claims. Rather, Mr. Crowell made transmissions that were as much as four minutes long.⁸⁹ Moreover, the interference we observed was not caused by any member of WARFA net, and were not the result of pile-ups, but were caused by Mr. Crowell intentionally transmitting on top of and interrupting other amateur transmissions.⁹⁰ While Mr. Crowell describes at length the transmissions he claims were made by members of WARFA net, his claims are not supported by or consistent with the observations of our Field Agents and the Commission's HFDF Center.

⁸¹ *NAL*, 30 FCC Rcd at 14268-69, para. 7.

⁸² *NAL*, 30 FCC Rcd at 14268-69, para. 7.

⁸³ Crowell *NAL* Response at 5.

⁸⁴ Crowell *NAL* Response at 10-15.

⁸⁵ Wikipedia defines "pile-up" as the presence of many ham operators trying to communicate with a distant entity, all in the same time. [https://en.wikipedia.org/wiki/Pileup_\(disambiguation\)](https://en.wikipedia.org/wiki/Pileup_(disambiguation)) (last visited June 7, 2016).

⁸⁶ Crowell *NAL* Response at 26. In addition, he criticizes WARFA net for failing to clear the "pile-ups" properly. Crowell *NAL* Response at 26-27.

⁸⁷ Crowell *NAL* Response at 9.

⁸⁸ Crowell *NAL* Response at 7, 18-19, *citing* From a Monitoring Enforcement Viewpoint, Frank M. Kratkovil, *QST Magazine*, Dec. 1965 at 32-33, for the proposition that "[n]o net has an exclusive franchise on any frequency."

⁸⁹ *NAL*, 30 FCC Rcd at 14268-69, para. 7.

⁹⁰ The *NAL* states that Commission staff observed at least a dozen instances of interference during each of the two days that they monitored Mr. Crowell's transmissions, ranging from 30 second to four minutes in duration. *NAL*, 30 FCC Rcd at 14268-69, para. 7. Specifically, staff observed 20 instances of interference on August 25, and 15 instances on August 27. These instances of interference occurred throughout the two-hour period monitored on each night.

40. Second, Mr. Crowell is mistaken in suggesting that the occurrence of harmful interference turns on the content of the communications of the parties suffering the interference. Section 333 of the Communications Act prohibits all willful or malicious interference to any station licensed under the Act, and makes no exceptions for stations that, in Mr. Crowell's or anyone else's opinion, have "nothing to communicate in the first instance."⁹¹

41. Third, although WARFA net is not a Commission licensee, and so has no right to be protected from interference, the individual members of WARFA net are Commission licensees and so have such interference protection rights. The proposed forfeiture penalty in the *NAL* was based in part on the interference Mr. Crowell appeared to have caused to the individual members of WARFA net, not to WARFA net as an organization.⁹² Mr. Crowell's assertion that WARFA net is not an entity with interference protection rights is not relevant to our conclusion that he violated Section 97.101(d) by causing harmful interference to members of WARFA net.

7. Efficacy of Direction-Finding

42. *Background.* In the *NAL*, the Bureau noted that its Field Agents used direction-finding techniques to determine that Mr. Crowell was the source of the radio signals causing harmful interference to other operators on 3908 kHz.⁹³ Mr. Crowell claims that the Commission cannot prove that he was the operator that was causing harmful interference, or that his transmissions prevented any station from communicating with another station.⁹⁴ Mr. Crowell also maintains that it is physically impossible to simultaneously locate the source of a signal and determine whether interference is occurring on that frequency, and that, therefore, the Commission's findings that he has caused harmful interference are unreliable.⁹⁵

43. *Discussion.* We are not persuaded by Mr. Crowell's arguments regarding the reliability of the technical evidence. The Bureau's Field Agents are well trained in direction-finding techniques, and the use of such techniques has been found to provide probative and reliable evidence.⁹⁶ Furthermore, the issue raised by Mr. Crowell arises when there is only one set of observations of a given signal. However, in these investigations, the Bureau used multiple teams of Field Agents, and those teams' direction-finding operations were supplemented by observations by the HFDF Center. As a result, Commission staff was able to monitor Mr. Crowell's transmissions, as well as the transmissions of other amateur operators on 3908 kHz. Subsequently, after staff had compared and synthesized all the observations of Bureau Field Agents and the HFDF Center, they were able to determine not only that Mr. Crowell's station was the source of the transmissions at issue, but also that Mr. Crowell had consistently caused interference to other amateur operators, by transmitting on top of and interrupting those other operators. The questions Mr. Crowell raises regarding direction-finding techniques do not take into account the involvement of multiple teams of Field Agents and the Commission's HFDF Center in the investigations on August 25 and 27.

⁹¹ See Crowell *NAL* Response at 9.

⁹² "[The Commission] observed at least a dozen instances per night, lasting from thirty seconds to at least four minutes each, of Mr. Crowell intentionally transmitting on top of and repeatedly interrupting *other amateurs on the WARFA net.*" *NAL*, 30 FCC Rcd at 14268-69, para. 7 (*emphasis added*).

⁹³ *NAL*, 30 FCC Rcd at 14267-68, para. 3.

⁹⁴ Crowell *NAL* Response at 8-9.

⁹⁵ Crowell *NAL* Response at 23.

⁹⁶ *Jeffrey G. Guss, Forfeiture Order*, 13 FCC Rcd 20368, 20371, para. 15 (CIB 1998), citing *Ernest M. Petter*, 57 FCC 2d 716 (1976).

B. Prohibited Transmissions

1. Background

44. Section 97.113(a)(4) of the Commission's Rules states that "[n]o amateur station shall transmit . . . [m]usic using a phone emission except as specifically provided elsewhere in this section."⁹⁷ On August 25 and 27, 2015, Western Region agents monitored Mr. Crowell's transmissions for approximately two hours each night and heard multiple instances of Mr. Crowell transmitting music and other recordings.⁹⁸ As discussed further below, Mr. Crowell claims that transmissions of music and other recordings are protected by the First Amendment, or that his particular transmissions are not subject to the prohibition. His arguments are not persuasive.

2. Freedom of Speech

45. *Background.* Mr. Crowell argues that the playing of music by amateurs is protected by the First Amendment.⁹⁹ He argues further that there is no basis for distinguishing recordings from spoken words for purposes of the Freedom of Speech clause of the First Amendment.¹⁰⁰

46. *Discussion.* The U.S. Court of Appeals for the District of Columbia Circuit has considered and rejected claims that Commission prohibitions on certain types of transmissions by amateur licensees violate the First Amendment. The court found that, because the electromagnetic spectrum is a limited resource, public policy demands placing some restrictions on certain transmissions.¹⁰¹

Since the early 1920's the demands for spectrum space always have exceeded the supply. As a result, it has been necessary to determine which uses of radio will be permitted, to allocate specific frequencies to such uses, and to prohibit transmissions over these frequencies clearly inconsistent with such uses.¹⁰²

The court went on to explain that the Commission can prohibit a certain type of conversation over a particular frequency where the alternative would be to deny many intended users any access to the frequency.¹⁰³ Finally, the court held that the prohibitions in Section 97.113 are reasonable exercises of the Commission's authority to "[c]lassify radio stations" and to "[p]rescribe the nature of the service to be rendered by each class of licensed stations and each station within any class."¹⁰⁴ Accordingly, on several occasions, the Commission has prohibited amateur radio operators from broadcasting music.¹⁰⁵

⁹⁷ 47 C.F.R. § 97.113(a)(4).

⁹⁸ *NAL*, 30 FCC Rcd at 14268, para. 4, 14270, para. 8.

⁹⁹ Crowell *NAL* Response at 9, 24.

¹⁰⁰ Crowell *NAL* Response at 26. *See also* Crowell June 29 E-mail (repeating his contention that playing recordings on the air by amateurs is protected by the First Amendment, and criticizing Field Agents who advised him otherwise).

¹⁰¹ *Gross*, 480 F.2d at 1291-92, quoting *NBC*, 319 U.S. at 226.

¹⁰² *Gross*, 480 F.2d at 1291.

¹⁰³ *Gross*, 480 F.2d at 1291, citing *Lafayette Radio Electronics Corp. v. United States*, 345 F.2d 278 (2d Cir. 1965).

¹⁰⁴ *Gross*, 480 F.2d at 1291, citing 47 U.S.C. §§ 303(a), (b).

¹⁰⁵ *Michael Guernsey, Licensee of Amateur Radio Station KZ8O Parchment, Michigan*, Forfeiture Order, 30 FCC Rcd 7354 (Enf. Bur. 2015) (Enf. Bur., Northeast Region, 2015) (*Guernsey Forfeiture Order*); *Jack Gerritsen Bell, California*, Forfeiture Order, 20 FCC Rcd 19256 (Enf. Bur., Western Region, 2005) (*Bell Forfeiture Order*); *Ronald E. Sauer, Licensee of Amateur Radio Station WE8E, Bedford Heights, Ohio*, Forfeiture Order, 19 FCC Rcd 14884 (Enf. Bur. 2004) (*Sauer Forfeiture Order*); *Scott E. Kamm, Licensee of Amateur Station NOUGN, Sioux City, Iowa*, Forfeiture Order, 18 FCC Rcd 9379 (Enf. Bur. 2003) (*Kamm Forfeiture Order*); *James C. Thompson, Suspension of License Amateur Radio Operator License Call Sign KA2YYBP*, Order, 15 FCC Rcd 25362 (WTB 2000) (*Thompson* (continued....))

Moreover, in 2004, the Commission considered and rejected a proposal to revise Section 97.113 to permit amateurs to transmit music, concluding that doing so “would be inconsistent with the definition and purpose of the amateur service.”¹⁰⁶ Mr. Crowell does not address this precedent, let alone provide an adequate reason to depart from it.

3. Commercially Viable Music

47. *Background.* Mr. Crowell maintains that the purpose of the restriction on broadcasting is to prevent amateur licensees from competing unfairly with broadcast radio stations. According to Mr. Crowell, it follows that, under the Radio Act of 1927, music was understood to be “commercially viable” music, and he asserts that that understanding was incorporated into the Communications Act of 1934 and Part 97 of the Commission’s rules. He argues further that “non-commercially viable” music is therefore not subject to any Part 97 restriction on music.¹⁰⁷ Finally, Mr. Crowell contends that, if the Commission does not distinguish between “commercially viable” and “non-commercially viable” music, the definition of “music” for purposes of Section 97.113(a)(4) would be unconstitutionally vague.¹⁰⁸

48. *Discussion.* As an initial matter, Mr. Crowell does not cite any of the legislative history of the Radio Act of 1927 or the Communications Act of 1934, or any Commission Order, to support his theory that Part 97 has historically been interpreted as distinguishing between “commercially viable” and “non-commercially viable” music, or that amateurs have historically been allowed to broadcast “non-commercially viable” music. On the contrary, as discussed above, the Commission has a long history of prohibiting amateur licensees from broadcasting music, without distinguishing certain types of music from others for purposes of the prohibition.¹⁰⁹

49. Moreover, Mr. Crowell does not provide a reasonable basis for distinguishing between “commercially viable” and “non-commercially viable” music. While the Commission adopted the restriction on broadcasting in part to ensure that amateur service frequencies were not used as a substitute for other communication services, as Mr. Crowell suggests,¹¹⁰ he overlooks another important function served by this restriction. As explained above, the U.S. Court of Appeals for the District of Columbia Circuit has found that the Commission can prohibit a certain type of conversation over a particular frequency where the alternative would be to deny any access to the frequency to many intended users.¹¹¹ Allowing some amateurs to broadcast music on amateur frequency bands would deny to many other amateurs any access to those bands, regardless of whether the music at issue is “commercially viable” or “non-commercially viable.”¹¹²

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Consent Decree); *Revocation of License of James W. Smith*, Initial Decision, PR Docket Nos. 84-774 and 84-775, 102 FCC 2d 262 (1985) (*Smith Revocation Order*), *aff’d* 1 FCC Rcd 594 (1986); *Andres Calandria, New Orleans, La., Suspension of Amateur Radio Operator License (K5MVP)*, Initial Decision, Docket No. 14548, 33 FCC 739 (1962) (*Calandria Suspension Order*); *Louis Raymond Choiniere, Holyoke, Mass., Suspension of Amateur Radio Operator License*, Findings of Fact and Conclusions of the Commission, Docket No. 5777, 8 FCC 201 (1940) (*Choiniere Suspension Order*).

¹⁰⁶ *Amendment of Part 97 of the Commission’s Rules Governing the Amateur Radio Services*, Notice of Proposed Rulemaking and Order, WT Docket No. 04-140, 19 FCC Rcd 7293, 7313-14, para. 41 (2004) (*2004 Part 97 Order*).

¹⁰⁷ Crowell *NAL* Response at 9-10.

¹⁰⁸ Crowell *NAL* Response at 9-10.

¹⁰⁹ See *Guernsey Forfeiture Order*; *Bell Forfeiture Order*; *Sauer Forfeiture Order*; *Kamm Forfeiture Order*; *Thompson Consent Decree*; *Smith Revocation Order*; *Calandria Suspension Order*; *Choiniere Suspension Order*.

¹¹⁰ *2004 Part 97 Order*, 19 FCC Rcd at 7212, para. 39.

¹¹¹ *Gross*, 480 F.2d at 1291.

¹¹² Mr. Crowell considers rap music to be “non-commercially viable” music, and so argues that it is speech protected by the First Amendment. Crowell *NAL* Response at 13. Because we find here that amateur licensees are prohibited (continued....)

50. Finally, we reject the claim that Section 97.113(a)(4) is unconstitutionally vague. “It is established that a law fails to meet the requirements of the Due Process Clause if it is so vague and standardless that it leaves the public uncertain as to the conduct it prohibits”¹¹³ Section 97.113(a)(4) does not leave the public uncertain as to the conduct it prohibits. It clearly prohibits amateur licensees from transmitting in a fashion that monopolizes the frequency at issue and causes interference to other amateur operators.¹¹⁴

4. Force and Effect of Section 97.113(a)(4)

51. *Background.* Alternatively, Mr. Crowell asserts that the Part 97 restriction against playing music has no force or effect, because a summary of the rule was not published in the Federal Register.¹¹⁵ He also argues that Enforcement Advisories do not constitute rules.¹¹⁶

52. *Discussion.* Mr. Crowell is mistaken with respect to his first point. A summary of the Order adopting Section 97.113(a)(4) was published in the Federal Register.¹¹⁷ The basis of Mr. Crowell’s Enforcement Advisory argument is not clear, because he does not identify any Enforcement Advisory in his Response. In any case, the Bureau did not treat any Enforcement Advisory as a rule, nor did it cite any Enforcement Advisory in its *NAL*.

5. Manufacture of Recording Equipment

53. *Background.* Mr. Crowell maintains that amateur equipment manufacturers have included digital audio recorders “for years,” for purposes of permitting the playing of music. He argues further that prohibiting amateur licensees from broadcasting recordings would necessitate issuing an advisory to such manufacturers to cease manufacture of such equipment.¹¹⁸

54. *Discussion.* We conclude that no such advisory is needed at this time. The Commission’s rules require equipment manufacturers to obtain equipment authorizations before marketing their equipment in the United States.¹¹⁹ The equipment authorization process is designed to verify that communications equipment marketed in the United States can be operated in compliance with the Commission’s rules.¹²⁰ Thus, the Commission does not place an obligation on equipment manufacturers to ensure that the operators purchasing their equipment comply with the Commission’s rules.¹²¹ With respect to the digital audio recorders cited by Mr. Crowell, if the only purpose they served was to enable the unlawful broadcast of music by amateur licensees, the Commission would not have

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under Section 97.113(a)(4) from broadcasting all music, regardless of its genre, we need not determine here what genres of music should be treated as “commercially viable” or “non-commercially viable.”

¹¹³ *City of Chicago v. Morales*, 527 U.S. 41, 56 (1999), quoting *Giaccio v. Pennsylvania*, 382 U.S. 399, 402-03 (1966).

¹¹⁴ *Smith Revocation Order*, 102 FCC 2d at 286.

¹¹⁵ Crowell *NAL* Response at 24-25.

¹¹⁶ Crowell *NAL* Response at 24.

¹¹⁷ *Relaxing Restrictions on the Scope of Permissible Communications in the Amateur Service*, Final Rule, 58 FR 43071 (Aug. 13, 1993).

¹¹⁸ Crowell *NAL* Response at 25.

¹¹⁹ 47 C.F.R. Part 2, Subpart J.

¹²⁰ See 47 C.F.R. § 2.915(a).

¹²¹ *WARNING: FCC Authorized Equipment Must be Used in Compliance with All Laws and Rules; Persons or Businesses Using Authorized Equipment in a Manner that Violates Federal Law or the Commission’s Rules Are Subject to Enforcement Action*, Public Notice, 31 FCC Rcd 5397 (Enf. Bur. 2016).

authorized that equipment.¹²² However, such equipment can be used consistently with the Commission's rules. For example, such recorders could be used to record conversations with other amateurs and to play back those conversations later when the licensee is not operating his or her transmitter. In light of this, we find that it is not necessary to recommend to equipment manufacturers that they cease manufacture of transmitters designed for amateur use with digital audio recorders.

6. Denial of Transmission of Music

55. *Background.* Mr. Crowell admits that a song he refers to as "his race relations improvement song" was played on the air in its entirety, as well as long segments of commercial rock songs, other recordings, and "a long segment of static-like noise." However, Mr. Crowell denies that he was the party who made any of these transmissions.¹²³

56. *Discussion.* Based on our Field Agents' observations of Mr. Crowell's transmissions August 25 and 27, 2015, discussed in detail above, it is clear that he transmitted music on those nights, in violation of Section 97.113(a)(4). His claim that he was not the licensee who played "his" song is simply unpersuasive in light of those observations.

C. Other Issues

57. Mr. Crowell makes a number of additional arguments, none of which cause us to question whether he violated the Commission's rules as discussed in the *NAL*. For example, Mr. Crowell contends that indecent language should not be prohibited from the amateur service, notwithstanding Section 97.113(a)(4).¹²⁴ Mr. Crowell argues further his transmissions were not "anywhere near as rude, insulting and objectionable" as transmissions made by certain participants in WARFA net.¹²⁵ However, the *NAL* does not include any allegation that Mr. Crowell may have transmitted indecent language. Rather, the violation of Section 97.113(a)(4) cited in the *NAL* was based on Mr. Crowell's transmission of music.¹²⁶ Accordingly, the indecent speech issue raised by Mr. Crowell is not relevant to this proceeding, and so we need not reach the arguments he offers for revisiting prior Commission statements regarding indecent speech in the amateur service.¹²⁷

¹²² See, e.g. *Taylor Oilfield Manufacturing, Inc.*, Notice of Apparent Liability for Forfeiture and Order, 28 FCC Rcd 4972, 4975 (para. 7) (2013) (noting that jamming devices cannot be certified or authorized because they cannot comply with the FCC's technical standards and therefore cannot be operated or imported lawfully in the United States or its territories.)

¹²³ Crowell *NAL* Response at 15-16.

¹²⁴ Crowell *NAL* Response at 27.

¹²⁵ Crowell *NAL* Response at 5, 7, 17. See also First Crowell May 7 E-mail (alleging that members of WARFA net had said "terrible things" about a Commission employee).

¹²⁶ *NAL*, 30 FCC Rcd at 14268, para. 4, 14270, para. 8.

¹²⁷ See, e.g., *New Indecency Enforcement Standards to be Applied to All Broadcast and Amateur Radio Licensees*, Public Notice, 2 FCC Rcd 2726, 2728 (1987) (concluding that the Commission's indecency standards apply to amateur licensees). Nor do we need to reach the issue of whether any of Mr. Crowell's transmissions, including but not limited to the racial, ethnic, and sexual slurs and epithets mentioned in the *NAL*, are more or less "rude, insulting, and objectionable" than the statements he ascribes to members of WARFA net. See *NAL*, 30 FCC Rcd at 14268, para. 3.

58. Mr. Crowell also denies statements regarding this proceeding that were made during a congressional hearing.¹²⁸ Because we did not rely on any statement in that congressional hearing in the NAL or this forfeiture order, we do not need to reach this issue.

59. Mr. Crowell further alleges that he received a threat from another amateur operator in January 2016, and that the threat violated Sections 97.103(a) and 97.113(a)(4) of the Commission's Rules.¹²⁹ Determining whether the transmission cited by Mr. Crowell constitutes a violation of any Commission rule would not affect our determination above that Mr. Crowell violated Sections 97.101(d) and 97.113(a)(4).¹³⁰

60. Mr. Crowell also makes numerous *ad hominem* attacks against members of WARFA net, Commission employees, and a member of the U.S. House of Representatives.¹³¹ Those *ad hominem* attacks are not relevant to our conclusion that Mr. Crowell violated Sections 97.101(d) and 97.113(a)(4). However, we note that Mr. Crowell professes to be an attorney.¹³² As such, he is subject to the requirements of Section 1.24 of the Commission's rules.¹³³ While all participants in the administrative process are expected to act in an appropriate manner when appearing before this agency, members of the bar have the added responsibility to uphold the ethics of their profession.¹³⁴ The Commission will not permit lawyers practicing before it to act disrespectfully or otherwise abuse its processes,¹³⁵ and under Section 1.24, the Commission can take action against any attorney who engages in such misconduct.¹³⁶ Mr. Crowell is hereby on notice that, in the event that he engages in an *ad hominem* attack in the future that rises to the level of misconduct within the meaning of Section 1.24, the Commission may take appropriate action, including but not limited to referring Mr. Crowell's actions to the California Bar Association for possible disbarment, or to the U.S. Department of Justice.¹³⁷

61. Finally, Mr. Crowell questions whether the Commission would be successful in a trial *de novo* pursuant to Section 504 of the Communications Act, to recover any forfeiture imposed in this proceeding, and in fact suggests that the suit might be dismissed under Rule 12 of the Federal Rules of Civil Procedure.¹³⁸ Mr. Crowell also contends that that the Commission may become liable to him under the Federal Tort Claims Act, the Equal Access to Justice Act, and 42 U.S.C. § 1983 as a result of issuing

¹²⁸ Crowell March 19 E-mail.

¹²⁹ Crowell Second January 21 E-mail.

¹³⁰ Mr. Crowell also states that he has reported this matter to El Dorado County, California, Sheriff's Office. Crowell Second January 21 E-mail. We will defer to the El Dorado County Sheriff's Office before determining what if any Commission action is warranted.

¹³¹ Crowell NAL Response at 3-4, 11, 17, 18; Crowell First January 21 E-mail.

¹³² Crowell NAL Response at 6.

¹³³ 47 C.F.R. § 1.24.

¹³⁴ *Opal Chadwell*, Declaratory Ruling, 2 FCC Rcd 3458, 3458, para. 3 (1987) (*Opal Chadwell Order*).

¹³⁵ *Opal Chadwell Order*, 2 FCC Rcd at 3458, para. 3.

¹³⁶ *See Amendment of Section 1.24 of the Commission's Rules to Incorporate Procedures Concerning Attorney Misconduct in Commission Proceedings*, Order, 10 FCC Rcd 10330, 10330, para. 2 (1995) (incorporating the standards and procedures announced in the *Opal Chadwell Order* into Section 1.24).

¹³⁷ Example of inappropriate, unprofessional, or disrespectful statements in this proceeding by Mr. Crowell that arguably rises to the level of misconduct within the meaning of Section 1.24 and the *Opal Chadwell Order* are set forth in Appendix B.

¹³⁸ Crowell NAL Response at 4, 8, 10, 11, 12, 16, 17, 19, 21, 22, 23, 24, 25, Second Crowell May 7 E-Mail; Crowell June 22 E-mail.

the *NAL* in this proceeding.¹³⁹ Mr. Crowell's contentions regarding Rule 12 or the statutes he cites would become relevant only if we had found any merit in any of the other arguments he has made in this enforcement proceeding. As discussed in detail above, Mr. Crowell's arguments in this proceeding have no merit. Moreover, even if any of his arguments had any merit, 42 U.S.C. § 1983 would not be relevant, because that statute applies only to actions by state and local entities, not by the federal government.¹⁴⁰

D. Proposed Forfeiture Amount

62. *Background.* Mr. Crowell does not argue explicitly for reduction of the forfeiture amount proposed in the *NAL*, instead contending for the reasons discussed above that the forfeiture amount should be eliminated in its entirety. However, Mr. Crowell makes two arguments that could be read as implicitly advocating a downward adjustment of the proposed forfeiture amount.

63. First, Mr. Crowell asserts that he is "in full compliance with Part 97."¹⁴¹ In particular, Mr. Crowell maintains that he has complied with the operating parameters of his license, and with applicable Part 97 power and emissions limits.¹⁴² Mr. Crowell also states that he identifies his station, as required by Part 97.¹⁴³ Further, Mr. Crowell asserts that WARFA net has accused him of operating at excessive power levels, and denies doing so.¹⁴⁴

64. Second, the *NAL* notes that Mr. Crowell was warned that, by causing interference and by broadcasting music and other recordings, he was violating the Commission's rules. The *NAL* also observed that Mr. Crowell chose to continue violating the rules after receiving the warning, and concluded that an upward adjustment to the proposed forfeiture amount was warranted.¹⁴⁵ Mr. Crowell now asserts that it would have been inappropriate for him to stop his transmissions upon receiving that warning, claiming that he is "privileged to ignore the statements and opinions of FCC staff members."¹⁴⁶

¹³⁹ Crowell January 28 E-mail, *citing* 5 U.S.C. § 504; 42 U.S.C. § 1983. The Federal Tort Claims Act is the exclusive waiver of sovereign immunity for actions sounding in tort against the United States, its agencies, and its employees acting within the scope of their employment. *See* 28 U.S.C. § 2679, *Shrieve v. United States*, 16 F.Supp.2d 853, 856 (N.D. Ohio 1998). The Equal Access to Justice Act provides a mechanism for prevailing parties in adversary adjudicatory proceedings before administrative agencies to recover their legal expenses, "unless the adjudicative officer of the agency finds that the position of the agency was substantially justified or that special circumstances make an award unjust." 5 U.S.C. § 504. Section 1983 makes a cause of action available to any person who has been deprived of a Constitutional right as a result of any law adopted by a state, territory, or the District of Columbia. 42 U.S.C. § 1983.

¹⁴⁰ *Dry v. United States*, 235 F.3d 1249, 1255 (10th Cir. 2000).

¹⁴¹ Crowell *NAL* Response at 28.

¹⁴² Crowell *NAL* Response at 1, 2, 26.

¹⁴³ Crowell *NAL* Response at 1. Mr. Crowell contends that failure to identify a station is one of the primary indicia of intentional interference in the amateur service. Crowell *NAL* Response at 22.

¹⁴⁴ Crowell *NAL* Response at 24. Mr. Crowell also asserts that, during the Commission's inspection of his station, the Commission asked him to operate his facilities in a way that would cause damage to them. He claims further that the request reflects either a lack of Commission expertise or an effort to "concoct evidence" that he was operating at excessive power. Crowell *NAL* Response at 24. We need not address any of these contentions, because there is nothing in the *NAL* to suggest that Mr. Crowell may be apparently liable for violating the applicable Part 97 power limits.

¹⁴⁵ *NAL*, 30 FCC Rcd at 14270, para. 10.

¹⁴⁶ Crowell June 29 E-mail, *citing Allen Leeds*, Order on Reconsideration, 22 FCC Rcd 1508, 1524, para. 13 (WTB 2007) (*Leeds Order*); *Hinton Telephone Co.*, Memorandum Opinion and Order on Reconsideration, 10 FCC Rcd 11625, 11637, para. 42 (1995) (*Hinton Reconsideration Order*).

65. *Discussion.* As an initial matter, we disagree with Mr. Crowell's general assertion that he is in full compliance with Part 97, given his violation of Sections 97.101(d) and 97.113(a)(4) discussed above. Regarding his assertions that he has complied with his license, with Part 97 power and emission limits, and with Part 97 station identification requirements, we note that the *NAL* never suggested otherwise. However, determining whether he has or has not complied with those other requirements is not relevant to our determination above that he has violated Sections 97.101(d) and 97.113(a)(4).¹⁴⁷

66. Second, Mr. Crowell misinterprets the orders he cites to support his claim that he is permitted to ignore warnings by Commission Field Agents. The orders cited by Mr. Crowell stand for the proposition that, in the event that Commission staff provides advice that is contrary to the Commission's rules, the Commission may still enforce its rules, despite any reliance by the public.¹⁴⁸ Mr. Crowell's argument turns this proposition on its head. In effect, he argues that, when the staff provides advice that is consistent with the Commission's rules, it relieves the public from any requirement to comply with those rules. This is diametrically opposed to the one of the orders Mr. Crowell cites.¹⁴⁹ Thus, Mr. Crowell's claim that he is "privileged to ignore the statements and opinions of FCC staff members"¹⁵⁰ is unfounded. Moreover, he has failed to show that the upward adjustment to the proposed forfeiture amount in the *NAL* is unwarranted.

E. License Renewal Proceeding

67. A proceeding to determine whether to revoke Mr. Crowell's amateur license is currently pending.¹⁵¹ Mr. Crowell asserts that his license renewal proceeding cannot proceed while this enforcement action is pending.¹⁵² We disagree. Under Section 4(j) of the Communications Act, the Commission may conduct its proceedings in such manner as will best conduce to the proper dispatch of business and to the ends of justice.¹⁵³ Mr. Crowell provides no reason to conclude that taking action in the license renewal proceeding prior to issuing this forfeiture order would somehow be inconsistent with Section 4(j). In any case, we are issuing this forfeiture order before taking action in the license renewal proceeding. We find that this adequately addresses Mr. Crowell's concern.¹⁵⁴

IV. SUMMARY AND CONCLUSION

68. In sum, based on the record before us, and in light of the applicable statutory factors and the Commission's forfeiture guidelines, we conclude that William F. Crowell willfully and repeatedly violated Section 333 of the Communications Act¹⁵⁵ and Sections 97.101(d) and 97.113(a)(4) of the

¹⁴⁷ A history of compliance with the Commission's rules might be relevant to determining whether a downward adjustment to a proposed forfeiture penalty is warranted. 47 C.F.R. § 1.80(b)(8), Note. However, Mr. Crowell does not propose any downward adjustment, and we find that there is nothing in the record in this proceeding that provides any justification for any downward adjustment to the forfeiture penalty proposed in the *NAL*.

¹⁴⁸ *Hinton Reconsideration Order*, 10 FCC Rcd at 11637, para. 42, citing *Malkan FM Associates v. FCC*, 935 F.2d 1313 (D.C.Cir.1991); *Leeds Order*, 22 FCC Rcd at 1513, para. 11, quoting *Hinton Reconsideration Order*, 10 FCC Rcd at 11637, para. 42.

¹⁴⁹ *Leeds Order*, 22 FCC Rcd at 1513, para. 11 ("It is a well-established principle that Commission staff lack the authority to modify Commission rules.").

¹⁵⁰ Crowell June 29 E-mail.

¹⁵¹ *William F. Crowell*, Hearing Designation Order, 23 FCC Rcd 1865 (Mobility Div., WTB, 2008).

¹⁵² Crowell *NAL* Response at 21.

¹⁵³ 47 U.S.C. § 154(j).

¹⁵⁴ Mr. Crowell also asserts that the Commission cannot process its mail in a timely fashion in ALJ cases, and that this somehow affects his due process rights in the license renewal proceeding. Crowell *NAL* Response at 21. We will address this argument to the extent warranted in the context of the license renewal proceeding.

¹⁵⁵ 47 U.S.C. § 333.

Commission's rules,¹⁵⁶ by intentionally causing interference to other amateur radio operators and transmitting prohibited communications, including music. We further find that Mr. Crowell has not provided any basis for eliminating or reducing the \$25,000 forfeiture proposed in the *NAL* in this proceeding.

V. ORDERING CLAUSES

69. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Act,¹⁵⁷ and Section 1.80 of the Commission's rules,¹⁵⁸ William F. Crowell **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of twenty-five thousand dollars (\$25,000) for willfully and repeatedly violating Section 333 of the Act and Sections 97.101(d), and 97.113(a)(4) of the Commission's rules.

70. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Commission's rules within thirty (30) calendar days after the release of this Forfeiture Order.¹⁵⁹ 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.¹⁶⁰

71. 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. William F. Crowell shall send electronic notification of payment to WR-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.¹⁶¹ 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.

72. 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

¹⁵⁶ 47 C.F.R. §§ 97.101(d), 97.113(a)(4).

¹⁵⁷ 47 U.S.C. § 503(b).

¹⁵⁸ 47 C.F.R. § 1.80.

¹⁵⁹ *Id.*

¹⁶⁰ 47 U.S.C. § 504(a).

¹⁶¹ An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

Street, S.W., Room 1-A625, Washington, DC 20554.¹⁶² 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.

73. **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 William F. Crowell at his address of record.

FEDERAL COMMUNICATIONS COMMISSION

Charles Cooper
Field Director
Enforcement Bureau

¹⁶² See 47 C.F.R. § 1.1914.

APPENDIX A

List of Supplements to the Record
Filed by William F. Crowell

1. Letter from William F. Crowell to David Hartshorn, District Director, San Francisco Office, Western Region, Enforcement Bureau, Federal Communications Commission, dated Jan. 17, 2016 (Crowell Supplement).
2. E-mail Letter from William F. Crowell to David Hartshorn, District Director, San Francisco Office, Western Region, Enforcement Bureau, Federal Communications Commission; and Margaret Egler, Regional Counsel, Western Region, Enforcement Bureau, Federal Communications Commission, dated Dec. 31, 2015 (Crowell December 31 E-mail).
3. E-mail Letter from William F. Crowell to David Hartshorn, District Director, San Francisco Office, Western Region, Enforcement Bureau, Federal Communications Commission; and Margaret Egler, Regional Counsel, Western Region, Enforcement Bureau, Federal Communications Commission, dated Jan. 21, 2016 (First Crowell January 21 E-mail).
4. E-mail Letter from William F. Crowell to David Hartshorn, District Director, San Francisco Office, Western Region, Enforcement Bureau, Federal Communications Commission, dated Jan. 21, 2016 (Second Crowell January 21 E-mail).
5. E-mail Letter from William F. Crowell Margaret Egler, Regional Counsel, Western Region, Enforcement Bureau, Federal Communications Commission, dated Jan. 28, 2016 (Crowell January 28 E-mail).
6. E-mail Letter from William F. Crowell to David Hartshorn, District Director, San Francisco Office, Western Region, Enforcement Bureau, Federal Communications Commission; and Margaret Egler, Regional Counsel, Western Region, Enforcement Bureau, Federal Communications Commission, dated Feb. 14, 2016 (Crowell February 14 E-mail).
7. E-mail Letter from William F. Crowell to David Hartshorn, District Director, San Francisco Office, Western Region, Enforcement Bureau, Federal Communications Commission; and Margaret Egler, Regional Counsel, Western Region, Enforcement Bureau, Federal Communications Commission, dated Mar. 19, 2016 (Crowell March 19 E-mail).
8. E-mail Letter from William F. Crowell to David Hartshorn, District Director, San Francisco Office, Western Region, Enforcement Bureau, Federal Communications Commission; dated Apr. 15, 2016 (Crowell April 15 E-mail).
9. E-mail Letter from William F. Crowell to David Hartshorn, District Director, San Francisco Office, Western Region, Enforcement Bureau, Federal Communications Commission; dated Apr. 27, 2016 (Crowell April 27 E-mail).
10. E-mail Letter from William F. Crowell to David Hartshorn, District Director, San Francisco Office, Western Region, Enforcement Bureau, Federal Communications Commission, dated May 7, 2016 (First Crowell May 7 E-mail).
11. E-mail Letter from William F. Crowell to David Hartshorn, District Director, San Francisco Office, Western Region, Enforcement Bureau, Federal Communications Commission, dated May 7, 2016 (Second Crowell May 7 E-mail).
12. E-mail Letter from William F. Crowell to Steven Spaeth, Field Counsel, Enforcement Bureau, Federal Communications Commission; dated June 22, 2016 (Crowell June 22 E-mail).
13. E-mail Letter from William F. Crowell to Steven Spaeth, Field Counsel, Enforcement Bureau, Federal Communications Commission; dated June 29, 2016 (Crowell June 29 E-mail).

APPENDIX B

Selected Excerpts of Submissions

By William F. Crowell

“In short, tell me you are kidding! You must be making this stuff up for some reason. Maybe because the President's skin is black, and/or because you're nothing but a race baiter?” Crowell *NAL* Response at 1.

“Didn't you ever ask yourself *why* the WARFA group represents itself to the public as an interracial friendship organization, but claimed to Congressman Walden that is a Black group? They did that because they are fundamentally devious and hypocritical in advancing their outdated, irrelevant, race-based grievances.” Crowell *NAL* Response at 3.

“Real republicans oppose the kind of federal government overreach and abuse represented by this case. Real Republicans are supposed to support Constitutional free-speech rights. Real Republicans don't pander to a racial minority. Congressman Walden simply doesn't do any of the things that real Republicans are supposed to do. What a phony! The man should be absolutely ashamed of himself for calling himself a Republican. I don't think a federal district court judge or jury in a Sec. 504 forfeiture collection action is going to be very impressed with Congressman Walden's phony, hypocritical, pandering display of raw political power based on skin color. Although we have come to expect that kind of thing from President Obama, real Republicans are not supposed to do that.” Crowell *NAL* Response at 4.

“You just don't like the *content* of my communications because I am justifiably critical of the Commission and I point out the obvious racism of the 'WARFA net'. I make public the 'WARFA net's never-ending, unjustified, self-serving race-based complaints, grievances, demands for reparations and justification of lawbreaking by Black people, and their insistence upon segregating themselves from “racist” white people on the band, so you are calling my transmissions 'interference' 'noise' and 'music' just to shut me up. That is a classic constitutional violation of my free-speech rights. *You're* the racists, not me!” Crowell *NAL* Response at 7 (*emphasis in original*).

“Next I heard someone play a recording of ‘Moody's Little Mouthpiece’, his daughter Moni Law, lecturing the all-Black City of Berkeley, California racial justice commission about how “Black lives matter” and how the City of Berkeley (which from all appearances is run entirely by Black people) needs to establish a “Truth and Reconciliation Commission” because there is no essential difference between the race relations in Berkeley today and those in South Africa under apartheid.” Crowell *NAL* Response at 14.

“Somebody played a Black self-help recording by Alexxis Tyler which everyone enjoyed very much and from which we have all benefited. One of the recordings taught us how to clean our rectums and private parts properly, while the second Alexxis Tyler recording instructed young Black women how to avoid being abused by Black men. Among other pertinent exclamations, I heard Ms. Tyler repeatedly say that ‘Vagina power is a motherfucking revolution!’ Please remember that I did not play these recordings; however Ms. Tyler's sentiments are certainly appropriate under Section 97.111(a)(1) of Part 97 as transmissions necessary to exchange messages with other stations in the amateur service (i.e., highly-commendable, core political free speech of significant socially-redeeming value).” Crowell *NAL* Response at 16.

“Maybe by then we'll have a President who's not antisemitic, an FCC Chairman who's not totally intimidated by a Black President, and an Attorney General who doesn't believe in federal government overreach, so by then perhaps the U.S. Attorney will refuse to prosecute the case any further.” Crowell *NAL* Response at 17.

“Why in the world would you two, presumably intelligent, people, listen to a thing this liar says! Listen to how he deliberately, and with intent to interfere, started talking over one station that was talking to another last night on 3840 kc.. He again deliberately tried to cause trouble. He thinks it is perfectly OK for him to get on 3840 kc. and jam everybody out, but that he has the exclusive right to determine who can use 3908 kc. Face it, he's a Black separatist racist who loves to poke white people, and we are sick of it. If you think his testimony is going to have any credibility with a jury, you are living in a dream world. Why would you align yourself with a race hustler like him?” First Crowell January 21 E-mail.