

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

In the Matter of)	
)	
Jerry W. Materne)	File No.: EB-FIELDSCR-17-00024994
)	NAL/Acct. No.: 201832020003
Licensee of Amateur Radio Station KC5CSG,)	FRN: 0005652698
Lake Charles, Louisiana)	
)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: July 24, 2018

Released: July 25, 2018

By the Regional Director, Region Two, Enforcement Bureau:

I. INTRODUCTION

1. We propose a penalty of \$18,000 against Jerry W. Materne for apparently causing intentional interference and for apparently failing to provide station identification on amateur radio frequencies. Amateur radio frequencies are shared, and amateur radio 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 call sign information disrupts the orderly administration of the Amateur Radio Service by preventing licensed users from identifying the entity that is transmitting. Mr. Materne was previously warned regarding this behavior in writing by the Enforcement Bureau and, given his history as a repeat offender, these apparent violations warrant a significant penalty.¹

2. In this Notice of Apparent Liability for Forfeiture (NAL), we find that Jerry W. Materne, licensee of Amateur Radio Station KC5CSG in Lake Charles, Louisiana, apparently willfully violated 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, by causing intentional interference to licensed radio operations and by failing to transmit his assigned call sign in the Amateur Radio Service.² We conclude Jerry W. Materne is apparently liable for a forfeiture in the amount of eighteen thousand dollars (\$18,000).

II. BACKGROUND

3. Mr. Materne is a licensee of station KC5CSG in the Amateur Radio Service in Lake Charles, Louisiana. The Commission has received numerous complaints alleging that he was causing interference to a local amateur repeater in Lake Charles, Louisiana, preventing other amateur licensees from using the repeater. In addition, on March 6, 2017, the trustee of the local repeater informed Mr. Materne that he would no longer be authorized to use the W5BII amateur repeater.³ On May 3, 2017, in response to some of these complaints, the Bureau issued a Letter of Inquiry (LOI) advising Mr. Materne

¹ See Letter from Laura Smith, Esq., Special Counsel, Enforcement Bureau, Federal Communications Commission to Jerry W. Materne (June 23, 2017) (Smith Warning Letter) (on file in EB-FIELDNER-17-00024179).

² 47 U.S.C. § 333; 47 CFR §§ 97.101(d) and 97.119(a).

³ See Letter from SWLARC Amateur Radio Club W5BII to Jerry W. Materne (March 6, 2017) (on file in EB-FIELDNER-17-00024179).

of the nature of the allegations against him and directing him to address the complaints.⁴ On May 22, 2017, Mr. Materne responded to the LOI denying that he was causing interference, but admitting to operating (simplex) on the output frequency of the repeater. On June 22, 2017, the Commission received an additional complaint regarding Mr. Materne. This complaint alleged that on June 21, 2017, during an attempted Emergency Net⁵ in response to the imminent landfall of Tropical Storm Cindy, Mr. Materne repeatedly transmitted on the repeater's input frequency, hindering the local Emergency Net's ability to coordinate weather Warnings and Alerts on behalf of the National Weather Service. Local amateurs, using direction finding techniques, tracked the signal of the interfering party to Mr. Materne's home and confirmed their findings to the Commission. Because of this complaint, on June 23, 2017, the Bureau issued a Warning Letter to Mr. Materne advising him of the complaint and noting that his behavior as described in the complaint would be a violation of Section 97.101(d) of the Commission's rules.⁶ On July 6, 2017, Mr. Materne responded to the Warning Letter, again arguing that transmitting on the output frequency of the repeater was permitted. He further stated that he was "tired of this trash harassing me" and noted, "I'm going to tell you like I tell this trash over here. Pound sand lady."⁷

4. On August 23, 2017, in response to continued complaints alleging intentional interference to amateur radio communications, an agent from the New Orleans Office of the Federal Communications Commission's Enforcement Bureau (Bureau) drove to Lake Charles, Louisiana to investigate. The agent monitored the frequency 146.130 MHz, and used direction finding techniques to identify the source of the transmissions as Mr. Materne's amateur radio station, KC5CSG, which he was operating at his residence in Lake Charles, Louisiana. The agent monitored the transmissions emanating from Mr. Materne's station for 6 - 7 hours that afternoon and heard him playing music on 146.130 MHz and warning other amateur operators that the local amateur radio club would not be able to conduct their net later that day. At approximately 7:25 p.m. that day, the agent observed Mr. Materne enter his vehicle and drive to a location near a local amateur repeater, W5BII. At that location, Mr. Materne parked his car, and for the next 30 minutes began transmitting an amateur digital radio signal from a hand-held radio in his vehicle. The digital signal caused interference to W5BII and the ongoing net.⁸ During this transmission, Mr. Materne did not provide his FCC-issued call sign. At approximately 8:00 p.m., the agent, accompanied by a deputy from the Calcasieu Parish Sheriff's Office, approached Mr. Materne's vehicle and asked to inspect his radios. The agent then interviewed Mr. Materne and inspected Mr. Materne's amateur radio station. The agent confirmed that Mr. Materne had in his possession an amateur radio station capable of operating on 146.130 MHz. Audio recordings captured by the agent demonstrate that the intentional interference ceased as the agent and the Sheriff's deputy approached Mr. Materne's vehicle.

III. DISCUSSION

5. We find that Mr. Materne apparently willfully violated Section 333 of the Act and Section 97.101(d) of the Commission's rules. Specifically, Mr. Materne apparently caused intentional interference to licensed Amateur Radio Service licensees and apparently failed to transmit his call sign, as required by the Amateur Radio Service rules.⁹

⁴ See Letter from Laura Smith, Esq., Special Counsel, Enforcement Bureau, Federal Communications Commission to Jerry W. Materne (May 5, 2017) (on file in EB-FIELDNER-17-00024179).

⁵ A "net" is an on-air meeting of a group of local amateurs to discuss matters of common interest.

⁶ See Smith Warning Letter at 2.

⁷ See Letter from Jerry W. Materne to Laura Smith, Esq., Special Counsel, Enforcement Bureau, Federal Communications Commission (July 6, 2017) (Materne Response) (on file in EB-FIELDNER-17-00024179).

⁸ Members of the local amateur community were attempting to check into the net but these check ins were not audible due to the interference.

⁹ 47 U.S.C. § 333; 47 CFR § 97.101.

A. Mr. Materne's Actions Caused Intentional Interference to Licensed Communications

6. The evidence in this case is sufficient to establish that Jerry W. Materne apparently violated Section 333 of the Act and Section 97.101(d) of the Commission's 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 station licensed or authorized by or under the Act or operated by the United States government."¹⁰ 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."¹¹ Section 97.101(d) of the Commission's rules states that "[n]o amateur operator shall willfully or maliciously interfere with or cause interference to any radio communications or signal."¹²

7. As discussed above, on August 23, 2017, an agent from the New Orleans Office observed Mr. Materne causing intentional interference to repeater W5BII by generating digital noise into an analog radio transmitting on the repeater's input frequency, 146.130 MHz. Materne thus apparently interfered with other amateur radio operators who were already communicating on the same frequency and his transmissions would have interfered with any other amateur licensees attempting use the frequency. Based on the nature of Mr. Materne's transmissions and his physical proximity to repeater W5BII during the 30-minute period in which he was causing interference, we find that Mr. Materne's transmissions appear to have been made in a deliberate act to prevent other amateur radio operators from conducting legitimate communications. Based on the evidence before us, we find that Jerry W. Materne apparently willfully violated Section 333 of the Act and Section 97.101(d) of the Commission's rules by intentionally interfering with other licensed amateur communications.

B. Mr. Materne Failed to Transmit a Call Sign Identification, as Required by the Commission's Rules

8. The evidence in this case is sufficient to establish that Mr. Materne apparently violated Section 97.119(a) of the Commission's rules. Section 97.119(a) of the Commission's rules states that "[e]ach amateur station, except a space station or telecommand 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."¹³ On August 23, 2017, an agent from the New Orleans Office monitored 146.130 MHz for approximately 6-7 hours and, during the 30-minute period when Mr. Materne transmitted at the repeater, the agent time observed transmissions by Mr. Materne in which he failed to transmit his assigned call sign, KC5CSG.¹⁴ Based on the evidence before us, we find that Mr. Materne apparently willfully violated Section 97.119(a) of the Commission's rules by failing to transmit his assigned call sign.

¹⁰ 47 U.S.C. § 333.

¹¹ H.R. Rep. No. 101-316, at 8 (1989).

¹² 47 CFR § 97.101(d); *see also* 47 CFR § 97.101(a) (stating that "each amateur radio station must be operated in accordance with good engineering and good amateur practice").

¹³ 47 CFR § 97.119(a).

¹⁴ Specifically, Mr. Materne failed to identify with his FCC-assigned call sign when he transmitted the amateur digital radio signal from a handheld radio he was using in his vehicle to cause deliberate interference to W5BII and the ongoing net.

C. Proposed Forfeiture

9. Section 503(b) of the Act authorizes the Commission to impose a forfeiture against any entity that “willfully or repeatedly fail[s] to comply with any of the provisions of [the Act] or of any rule, regulation, or order issued by the Commission.”¹⁵ Here, Section 503(b)(2)(D) of the Act authorizes us to assess a forfeiture of up to \$19,639 for each day of a continuing violation, up to a statutory maximum of \$147,290 for a single act or failure to act.¹⁶ In exercising our forfeiture authority, we must consider the “nature, circumstances, extent, and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.”¹⁷ In addition, the Commission has established forfeiture guidelines; they establish base penalties for certain violations and identify criteria that we consider when determining the appropriate penalty in any given case.¹⁸ Under these guidelines, we may adjust a forfeiture upward for violations that are egregious, intentional, or repeated, or that cause substantial harm or generate substantial economic gain for the violator.¹⁹ Section 1.80 of the Commission’s rules sets a base forfeiture of \$7,000 for causing interference to authorized stations, and a base forfeiture of \$1,000 for failing to provide station identification.²⁰ We have discretion, however, to depart from these guidelines, taking into account the particular facts of each individual case.²¹

10. Given the totality of the circumstances, and consistent with the *Forfeiture Policy Statement*, we conclude that an upward adjustment is warranted. The Commission previously provided Mr. Materne with written notice that causing interference to other amateur radio operators violated the Act and Commission’s rules.²² Having received the Smith Warning Letter, Mr. Materne repeated similar conduct and did so in a manner demonstrating intent to violate the Act and the Commission’s rules and a deliberate disregard for the Commission’s authority and the very spirit of the Amateur Radio Service by (a) advising the Bureau representative to “pound sand,”²³ (b) announcing his intent to interfere with the local net, and (c) purposefully driving to the site of the W5BII repeater to deliberately interfere with other amateur licensees. Thus, we find that Mr. Materne’s apparent repeated, intentional, and egregious apparent violations of Section 333 of the Act and Section 97.101(d) of the Commission’s rules warrant an

¹⁵ 47 U.S.C. § 503(b).

¹⁶ See 47 U.S.C. § 503(b)(2)(D); 47 CFR §§ 1.80(b)(7), (9); see also *Jay Peralta, Corona, New York*, Notice of Apparent Liability for Forfeiture, 32 FCC Rcd 3246, 3250 n.30 (2017) (Peralta NAL) (discussing inflation adjustments to the forfeitures specified in Section 503(b)(2)(D)); *Amendment of Section 1.80(b) of the Commission’s Rules Adjustment of Civil Monetary Penalties to Reflect Inflation*, Order, DA 18-12, at https://apps.fcc.gov/edocs_public/attachmatch/DA-18-12A1.pdf (EB 2018).

¹⁷ 47 U.S.C. § 503(b)(2)(E).

¹⁸ 47 CFR § 1.80(b)(8), Note § II (articulating criteria for upward adjustments (egregious misconduct, ability to pay/relative disincentive, intentional violation, substantial harm, prior violations of any FCC requirements, substantial economic gain, and repeated or continuous violation) and downward adjustments (minor violation, good faith or voluntary disclosure, history of overall compliance, and inability to pay)).

¹⁹ *Id.*

²⁰ 47 CFR § 1.80.

²¹ *The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087, 17098–99, para. 22 (1997) (noting that “[a]lthough we have adopted the base forfeiture amounts as guidelines to provide a measure of predictability to the forfeiture process, we retain our discretion to depart from the guidelines and issue forfeitures on a case-by-case basis, under our general forfeiture authority contained in Section 503 of the Act”) (*Forfeiture Policy Statement*), *recons. denied*, Memorandum Opinion and Order, 15 FCC Rcd 303 (1999).

²² See Letter from Laura Smith, Esq., Special Counsel, Enforcement Bureau, Federal Communications Commission to Jerry W. Materne (June 23, 2017) (on file in EB-FIELDNER-17-00024179).

²³ Materne Response at 1.

upward adjustment of \$10,000 to the proposed forfeiture.²⁴ In applying the applicable statutory factors, we also consider whether there is any basis for a downward adjustment of the proposed forfeiture. Here, we find none.

11. Applying the *Forfeiture Policy Statement*, Section 1.80 of the Commission's rules, and the statutory factors to the instant case, we therefore propose a total monetary forfeiture of \$18,000 (consisting of the following: a \$7,000 forfeiture for interference, a \$1,000 forfeiture for failure to provide station identification, and an upward adjustment of \$10,000) for which Mr. Materne is apparently liable. We caution Mr. Materne that future violations of this kind may result in significantly higher forfeitures or revocation of his amateur license.

IV. CONCLUSION

12. We have determined that Jerry W. Materne apparently willfully violated Section 333 of the Act and Sections 97.101(d) and 97.119(a) of the Commission's rules.²⁵ Accordingly, we find that Jerry W. Materne is apparently liable for a total forfeiture of \$18,000.

V. ORDERING CLAUSES

13. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Act and Sections 0.111, 0.311, and 1.80 of the Commission's rules, Jerry W. Materne is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of eighteen thousand dollars (\$18,000) for willful and repeated violations of Section 333 of the Act and Sections 97.101(d) and 97.119(a) of the Commission's rules.²⁶

14. **IT IS FURTHER ORDERED** that, pursuant to Sections 0.111, 0.311, and 1.80 of the Commission's rules,²⁷ within thirty (30) calendar days of the release date of this Notice of Apparent Liability for Forfeiture, Jerry W. Materne **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture consistent with paragraph 16, below.

15. 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. Jerry W. Materne shall also send electronic notification on the date said payment is made to field@fcc.gov. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted.²⁸ When completing the FCC Form 159, enter the Account Number in block number 23A (call sign/other ID) and enter the letters "FORF" in block number 24A (payment type code). Below are additional instructions you should follow based on the form of payment you select:

²⁴ See, e.g., *Robert Brown*, Memorandum Opinion and Order, 27 FCC Rcd 6975 (EB 2012), *aff'g*, Forfeiture Order, 26 FCC Rcd 6854 (EB 2011), *aff'g*, Notice of Apparent Liability for Forfeiture, 25 FCC Rcd 13740 (EB 2010) (upwardly adjusted proposed forfeiture by \$5,000 as a result of violations found to be egregious since violator operated an unlicensed radio station after receiving a written warning that such action violated the Act and the Commission's rules); see also *Behringer USA, Inc.*, Notice of Apparent Liability for Forfeiture and Order, 21 FCC Rcd 1820, 1827-28, para. 22 (2006) (upward adjustment for Behringer's repeated and willful violation of the Commission's rules by its continued marketing of unauthorized devices, despite knowing that it was in violation of Commission rules), *forfeiture ordered*, 22 FCC Rcd 10451 (2007) (forfeiture paid); *Peninsula Commc'ns*, Forfeiture Order, 17 FCC Rcd 2832 (2002) (upward adjustment warranted for intentional continued unauthorized operation of station).

²⁵ 47 U.S.C. § 333. 47 CFR §§ 97.101(d), 97.119(a).

²⁶ 47 U.S.C. §§ 503(b), 333; 47 CFR §§ 0.111, 0.311, 1.80, 97.101(d), 97.119(a).

²⁷ 47 CFR §§ 0.111, 0.311, 1.80.

²⁸ An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

- 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.

16. 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. 20554.²⁹ If you have questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone, 1-877-480-3201, or by e-mail, ARINQUIRIES@fcc.gov.

17. 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 Commission's rules.³⁰ Mail the written statement to Federal Communications Commission, Enforcement Bureau, Office of the Field Director, 445 12th Street, S.W., Washington, DC 20554, and include the NAL/Acct. No. referenced in the caption. The statement must also be e-mailed to field@fcc.gov.

18. 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.

19. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture shall be sent by both Certified Mail, Return Receipt Requested, and first-class mail to Jerry W. Materne at his address of record.

FEDERAL COMMUNICATIONS COMMISSION

Ronald Ramage
Regional Director, Region Two
Enforcement Bureau

²⁹ See 47 CFR § 1.1914.

³⁰ 47 CFR §§ 1.16, 1.80(f)(3).