

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

In the Matter of)	
)	
Caribbean Network Solutions, Inc.)	EB-FIELDSCR-18-00027564
Bayamon, Puerto Rico)	NAL/Acct. No.: 201932020001
)	FRN: 0028316164
)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE AND ORDER

Adopted: May 20, 2019

Released: May 20, 2019

By the Region Two Regional Director, Enforcement Bureau:

I. INTRODUCTION

1. The Federal Aviation Administration (FAA) uses terminal doppler weather radar stations to detect wind shear and other dangerous weather conditions near airports. Interference to these radar stations is unacceptable and, in certain circumstances, could be potentially life threatening. Accordingly, we propose a penalty of \$20,000 against Caribbean Network Solutions, Inc. (Caribbean Network),¹ for apparently willfully violating section 301 of the Communications Act of 1934, as amended (Act),² and sections 15.1(b) and 15.407(h)(2) of the Commission’s rules³ by apparently operating two Unlicensed National Information Infrastructure (U-NII) devices without a license, in a manner inconsistent with the Commission’s rules, and in a manner that caused interference to an FAA terminal doppler weather radar station in San Juan, Puerto Rico.

II. BACKGROUND

2. Section 301 of the Act states that “[n]o person shall use or operate any apparatus for the transmission of energy or communications or signals by radio” within the United States or its territories without a license granted by the Commission.⁴ Part 15 of the Commission’s rules provides an exception to this general section 301 license requirement and sets forth conditions under which such devices (intentional radiators) may operate without an individual license.⁵ Pursuant to section 15.1(b) of the

¹ Any entity that is a “Small Business Concern” as defined in the Small Business Act (Pub. L. 85-536, as amended) may avail itself of rights set forth in that Act, including rights set forth in 15 U.S.C. § 657, “Oversight of Regulatory Enforcement,” in addition to other rights set forth herein.

² 47 U.S.C. § 301. Section 312(f)(1) of the Act defines “willful” as the “conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate” the law. 47 U.S.C. § 312(f)(1). As Congress explained, the term is used to address a situation in which a person “knew that he [or she] was doing the act in question, regardless of whether there was an intent to violate the law.” H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982) (also noting that the definition of “willful” in section 312(f)(1) was intended to be similarly interpreted in the context of a forfeiture brought under section 503(b) of the Act). *See also, Jay Peralta, Corona, New York*, Notice of Apparent Liability for Forfeiture, 32 FCC Rcd 3246, 3247-48, para. 5 (2017), *forfeiture ordered*, 32 FCC Rcd 7993 (2017).

³ 47 CFR §§ 15.1(b), 15.407(h)(2).

⁴ 47 U.S.C. § 301.

⁵ *See* 47 CFR §§ 15.1, *et seq.*

Commission's rules, however, "operation of an intentional . . . radiator that is *not* in accordance with the regulations in this part *must be licensed*. . . ."⁶ In order to avoid interference to the FAA's terminal doppler weather radar installations, the Commission requires, pursuant to section 15.407(h)(2) of its rules, that Unlicensed National Information Infrastructure devices operating in the 5.25 – 5.35 GHz (U-NII-2A) and 5.47 – 5.725 GHz (U-NII-2C) bands have Dynamic Frequency Selection radar detection functionality, which allows them to detect the presence of radar systems and automatically avoid operating on the same channel as those nearby radar systems.⁷

3. As part of the Enforcement Bureau's (Bureau) ongoing coordination efforts with the FAA, on August 8, 2018, a Field Agent contacted the FAA to inquire whether the FAA's terminal doppler weather radar station serving the San Juan International Airport was receiving interference. FAA personnel confirmed that the terminal doppler weather radar station was receiving significant interference directly south of the radar station (i.e., on an azimuth of 181° True North). According to the FAA, the San Juan terminal doppler weather radar station operates on 5.610 GHz and was receiving interference from a source operating on that frequency or an adjacent frequency.

4. On August 10, 2018, Bureau personnel determined, using direction-finding techniques, that radio emissions on 5.600 GHz were emanating from an antenna structure registered to Puerto Rico Telephone Company, Inc. (d/b/a Claro Puerto Rico) under ASR No. 1010668 and located in Hato Tejas, Bayamon, Puerto Rico (the Antenna Structure). Bureau personnel contacted Claro Puerto Rico and requested a list of entities authorized to operate from the Antenna Structure, which Claro Puerto Rico provided on August 16, 2018. On August 23-24, 2018, Bureau personnel contacted the entities identified by Claro Puerto Rico and requested that they identify their respective equipment transmitting from the Antenna Structure, and state, for each device, its manufacturer, model, SSID, MAC address, and operating frequency. A Field Agent reviewed the responses and determined that a Ubiquiti Networks Rocket 5AC PTMP device operated by Caribbean Network was configured to operate with a center frequency of 5.600 GHz and therefore could have been the source of interference to the FAA's terminal doppler weather radar station if the device was not operating with Dynamic Frequency Selection enabled.

5. On August 28, 2018, Bureau personnel traveled to the Antenna Structure to observe whether any of its tenants continued to operate on or adjacent to 5.610 GHz. Bureau personnel found no such devices operating on or adjacent to 5.610 GHz and subsequently learned from the FAA that on August 25, 2018 – the day after Caribbean Network provided Bureau personnel with information about its devices operating from the Antenna Structure – the FAA observed a sharp reduction in the interference from directly south of the San Juan terminal doppler weather radar station (i.e., on an azimuth of 181° True North).

6. On September 25, 2018, Bureau personnel traveled to Caribbean Network's main office, to meet with company representatives, who used an online management tool to show the Bureau personnel the configurations of Caribbean Network's radio located on the Antenna Structure. During this review, Bureau personnel observed that two Ubiquiti Rocket 5AC PTMP U-NII devices (one located on the Antenna Structure, and the other at a remote location) (together, the Ubiquiti Devices) were operating on the same wireless network using a center frequency of 5.620 GHz. Bureau personnel also observed that the Ubiquiti Devices were configured to operate using the Argentina country code, rather than the United States country code, and that Dynamic Frequency Selection was not enabled. At the conclusion of the inspection, Bureau personnel watched as Caribbean Network personnel changed the center frequency of the Ubiquiti Devices so that the devices were no longer operating on or proximate to the San Juan terminal doppler weather radar station's operating frequency. Bureau personnel subsequently reviewed

⁶ 47 CFR § 15.1(b) (emphasis added).

⁷ See 47 CFR § 15.407(h)(2).

the user manual for the online management tool and confirmed that, based on the observed device settings, Dynamic Frequency Selection was not enabled for either Ubiquiti Device.⁸

III. DISCUSSION

7. We find that Caribbean Network has apparently willfully violated section 301 of the Act and has also apparently violated sections 15.1(b) and 15.407(h)(2) of the Commission's rules.⁹ Specifically, on September 25, 2018, Bureau personnel observed that Caribbean Network was operating the Ubiquiti Devices on 5.620 GHz (i.e., within the U-NII-2C band) that it had configured to operate without the required Dynamic Frequency Selection capability enabled. Caribbean Network's misconfiguration of the Ubiquiti Devices caused them to operate outside of the parameters of section 15.407(h)(2) of the Commission's rules. Because Caribbean Network was operating the Ubiquiti Devices on 5.620 GHz without Dynamic Frequency Selection enabled, it did not satisfy the section 15.1(b) condition for unlicensed operation – namely that devices must be operated in accordance with the applicable provisions of Part 15 of the Commission's rules.¹⁰ Because Caribbean Network holds no license from the Commission permitting operation on 5.620 GHz without Dynamic Frequency Selection, we find that its operation of the two Ubiquiti Devices without Dynamic Frequency Selection enabled apparently violated section 301 of the Act and sections 15.1(b) and 15.407(h)(2) of the Commission's rules.¹¹

A. Proposed Forfeiture

8. 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.”¹² Here, section 503(b)(2)(D) of the Act authorizes us to assess a forfeiture against Caribbean Network of up to \$20,134 for each day of a continuing violation, up to a statutory maximum of \$151,005 for a single act or failure to act.¹³ 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.”¹⁴ 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.¹⁵ Under these guidelines, we may adjust a forfeiture upward

⁸ Caribbean Network used Ubiquiti's airOS software to manage the device in question. According to the airOS user manual, had Dynamic Frequency Selection been active, “DFS” would have been displayed after the operating frequency. See Ubiquiti Networks, airOS 7 Operating System for Ubiquiti® airMAX® ac Series Products: User Guide, Release Version: 7.1, at https://dl.ubnt.com/guides/airOS/airOS_UG_V71.pdf (on file in EB-FIELDSCR-18-00027564). “DFS” was not displayed.

⁹ 47 U.S.C. § 301; 47 CFR §§ 15.1(b), 15.407(h)(2).

¹⁰ 47 CFR §§ 15.1(b), 15.407(h)(2).

¹¹ 47 U.S.C. § 301; 47 CFR §§ 15.1(b), 15.407(h)(2).

¹² 47 U.S.C. § 503(b).

¹³ 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) (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, 33 FCC Rcd 46 (EB 2018); see also *Annual Adjustment of Civil Monetary Penalties To Reflect Inflation*, 84 Fed. Reg. 2461 (Feb. 7, 2019).

¹⁴ 47 U.S.C. § 503(b)(2)(E).

¹⁵ 47 CFR § 1.80(b)(8), Note to paragraph (b)(8).

for violations that are egregious, intentional, or repeated, or that cause substantial harm or generate substantial economic gain for the violator.¹⁶

9. Pursuant to the Commission's *Forfeiture Policy Statement* and section 1.80 of the Commission's rules, the base forfeiture amount for operation without an instrument of authorization is \$10,000.¹⁷ Because, on September 25, 2018, Caribbean Network apparently operated two Ubiquiti Devices on 5.620 GHz without having Dynamic Frequency Selection enabled and without a license, as required when operating outside of the parameters set forth in Part 15 of the Commission's rules,¹⁸ we find that Caribbean Network's conduct resulted in two separate apparent violations of section 301 of the Act and sections 15.1(b) and 15.407(h)(2) of the Commission's rules. These two apparent violations yield an aggregate base forfeiture of \$20,000.¹⁹

10. In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in section 503(b)(2)(E) of the Act, which include the nature, circumstances, extent, and gravity of the violations, and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require. Taking the statutory factors and applicable precedents into account, we conclude that neither an upward nor a downward adjustment is appropriate here.²⁰ We therefore propose an aggregate forfeiture of \$20,000 for Caribbean Network's apparent violations of section 301 of the Act and sections 15.1(b) and 15.407(h)(2) of the Commission's rules.

B. Reporting Requirement

11. To preserve the integrity of the FAA's terminal doppler weather radar station serving the San Juan International Airport, we also determine that Caribbean Network should certify its compliance with the requirements at issue in this matter. We therefore order Caribbean Network to submit a statement signed under penalty of perjury by an officer or director of the company stating that each U-NII device that it operates is currently operating in compliance with the Commission's rules and the equipment's applicable authorizations. This statement must be provided to the Enforcement Bureau at the address listed in paragraph 15 within thirty (30) calendar days of the release date hereof.

IV. CONCLUSION

12. We have determined that Caribbean Network apparently willfully violated section 301 of the Act and sections 15.1(b) and 15.407(h)(2) of the Commission's rules.²¹ As such, Caribbean Network is apparently liable for a forfeiture of \$20,000.

¹⁶ *Id.*

¹⁷ *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087 (1997) (*Forfeiture Policy Statement*), *recons. denied*, 15 FCC Rcd 303 (1999); 47 CFR § 1.80.

¹⁸ *See* 47 CFR § 15.1(b).

¹⁹ *See, e.g., Towerstream Corporation, Middletown, Rhode Island*, Notice of Apparent Liability for Forfeiture and Order, 28 FCC Rcd 11604 (2013) (applying a \$10,000 base forfeiture for the unauthorized operation of a U-NII device and upwardly adjusting to the statutory maximum because the violations were intentional, caused substantial harm to terminal doppler weather radar systems, and followed multiple prior violations) (*Towerstream NAL*), *terminated in* Order, 31 FCC Rcd 8530 (EB 2016).

²⁰ 47 U.S.C. § 503(b)(2)(E); *Towerstream NAL*, 28 FCC Rcd at 11613, para. 28; *Directlink MO&O*, 30 FCC Rcd at 2223, para. 4.

²¹ 47 U.S.C. § 301; 47 CFR §§ 15.1(b) & 15.407(h)(2).

V. ORDERING CLAUSES

13. Accordingly, **IT IS ORDERED** that, pursuant to section 503(b) of the Act²² and section 1.80 of the Commission's rules,²³ Caribbean Network Solutions, Inc. is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of Twenty Thousand Dollars (\$20,000) for willful violations of section 301 of the Act;²⁴ and sections 15.1(b) and 15.407(h)(2) of the Commission's rules.²⁵

14. **IT IS FURTHER ORDERED** that, pursuant to section 1.80 of the Rules,²⁶ within thirty (30) calendar days of the release date of this Notice of Apparent Liability for Forfeiture and Order, Caribbean Network Solutions, Inc. **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 18 below.

15. **IT IS FURTHER ORDERED** that Caribbean Network Solutions, Inc. **SHALL SUBMIT** a written statement, as described in paragraph 11, within thirty (30) calendar days of the release date of this Notice of Apparent Liability for Forfeiture and Order. The statement must be mailed to the Federal Communications Commission, Enforcement Bureau, Office of the Field Director, 445 12th Street, SW, Washington, DC 20554, with a copy sent by email to field@fcc.gov.

16. Payment of the forfeiture must be made by credit card, ACH (Automated Clearing House) debit from a bank account using the Commission's Fee Filer (the Commission's online payment system),²⁷ or by wire transfer. The Commission no longer accepts forfeiture payments by check or money order. Below are instructions that payors should follow based on the form of payment selected:²⁸

- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. A completed Form 159 must be faxed to the Federal Communications Commission at 202-418-2843 or e-mailed to RROGWireFaxes@fcc.gov on the same business day the wire transfer is initiated. Failure to provide all required information in Form 159 may result in payment not being recognized as having been received. When completing FCC Form 159, enter the Account Number in block number 23A (call sign/other ID), enter the letters "FORF" in block number 24A (payment type code), and enter in block number 11 the FRN(s) captioned above (Payor FRN).²⁹ For additional detail and wire transfer instructions, go to <https://www.fcc.gov/licensing-databases/fees/wire-transfer>.
- Payment by credit card must be made by using the Commission's Fee Filer website at <https://apps.fcc.gov/FeeFiler/login.cfm>. To pay by credit card, log-in using the FRN captioned above. If payment must be split across FRNs, complete this process for each FRN. Next, select "Pay bills" on the Fee Filer Menu, and select the bill number associated with the NAL Account – the bill number is the NAL Account number with the first two digits

²² 47 U.S.C. § 503(b).

²³ 47 CFR § 1.80.

²⁴ 47 U.S.C. § 301.

²⁵ 47 CFR §§ 15.1(b) & 15.407(h)(2).

²⁶ 47 CFR § 1.80.

²⁷ Payments made using the Commission's Fee Filer system do not require the submission of an FCC Form 159.

²⁸ For questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone at 1-877-480-3201 (option #6), or by e-mail at ARINQUIRIES@fcc.gov.

²⁹ Instructions for completing the form may be obtained at <https://www.fcc.gov/Forms/Form159/159.pdf>.

excluded – and then choose the “Pay by Credit Card” option. Please note that there is a dollar limitation on credit card transactions, which cannot exceed \$24,999.99.

- Payment by ACH must be made by using the Commission’s Fee Filer website at <https://apps.fcc.gov/FeeFiler/login.cfm>. To pay by ACH, log in using the FRN captioned above. If payment must be split across FRNs, complete this process for each FRN. Next, select “Pay bills” on the Fee Filer Menu and then select the bill number associated to the NAL Account – the bill number is the NAL Account number with the first two digits excluded – and choose the “Pay from Bank Account” option. Please contact the appropriate financial institution to confirm the correct Routing Number and the correct account number from which payment will be made and verify with that financial institution that the designated account has authorization to accept ACH transactions.

17. Any request for making full payment over time under an installment plan should be sent to: Chief Financial Officer—Financial Operations, Federal Communications Commission, 445 12th Street, SW, Room 1-A625, Washington, DC 20554.³⁰ Questions regarding payment procedures should be directed to the Financial Operations Group Help Desk by phone, 1-877-480-3201, or by e-mail, ARINQUIRIES@fcc.gov.

18. 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.³¹ The written statement must be mailed to the Office of the Secretary, Federal Communications Commission, 445 12th Street, SW, Washington, DC 20554, ATTN: Enforcement Bureau – Office of the Field Director, and must include the NAL/Account Number referenced in the caption. The statement must also be e-mailed to field@fcc.gov.

19. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices; or (3) some other reliable and objective documentation that accurately reflects the petitioner’s current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation.

20. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture and Order shall be sent by first class mail and certified mail, return receipt requested, to Caribbean Network Solutions, Inc., Condominio Vistas del Pinar, Apt 6404, Toa Alta, Puerto Rico 00953.

FEDERAL COMMUNICATIONS COMMISSION

Ronald Ramage
Regional Director, Region Two
Enforcement Bureau

³⁰ See 47 CFR § 1.1914.

³¹ 47 CFR §§ 1.16, 1.80(f)(3).