

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

In the Matter of
Jose Perez
Perez Communications and Electronics
New Milford, New Jersey
File No.: EB-FIELDNER-19-00028519

CITATION AND ORDER
ILLEGAL PROGRAMMING OF UNAUTHORIZED FREQUENCIES

Adopted: July 3, 2019

Released: July 3, 2019

By the Regional Director, Region One, Enforcement Bureau:

I. NOTICE OF CITATION

1. This CITATION AND ORDER (Citation) notifies Jose Perez (Mr. Perez) that he is being cited for programming unauthorized frequencies into a transmitter in violation of section 90.427(b) of the Commission’s rules (Rules).1 We therefore direct Mr. Perez to immediately cease and desist from programming transmitters to operate on frequencies for which they are not authorized, and to avoid any recurrence of this misconduct. If Mr. Perez fails to comply with these laws, he may be liable for significant penalties, including fines of up to \$20,134 per day.

2. Notice of Duty to Comply with the Law: We issue this Citation pursuant to section 503(b)(5) of the Communications Act of 1934, as amended (Act), which states that the Federal Communications Commission (Commission or FCC) may not impose monetary forfeitures against non-regulatees who violate the Rules or the Act unless and until: (a) the Commission issues a citation to the violator; (b) the Commission provides the violator a reasonable opportunity to respond; and (c) the violator subsequently engages in conduct described in the citation.2 Accordingly, Mr. Perez is hereby on notice that he must comply with section 90.427(b) of the Rules. If Mr. Perez subsequently engages in any conduct described in this Citation—and specifically any violation of section 90.427(b) of the Rules—Mr. Perez may be subject to civil penalties, including but not limited to, substantial monetary forfeitures. In assessing such forfeitures, the Commission may consider both the conduct that led to this Citation and the conduct following it.3

1 47 CFR pts. 0 – 101; § 90.427(b). 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 See 47 U.S.C. § 503(b)(5).

3 See S. Rep. No. 95-580, 95th Cong., 1st Sess. at 9 (1977) (If a person or entity that has been issued a citation by the Commission thereafter engages in the conduct for which the citation of violation was sent, the subsequent notice of apparent liability “would attach not only for the conduct occurring subsequently but also for the conduct for which the citation was originally sent.”) (emphasis added).

3. **Notice of Duty to Provide Information:** Pursuant to sections 4(i), 4(j), and 403 of the Act,⁴ we direct Mr. Perez to respond in writing, within thirty (30) calendar days after the release date of this Citation, to the information and document requests set forth in paragraph 6 below.

II. BACKGROUND

4. On February 25, 2019, in response to a complaint of interference, Agents from the Enforcement Bureau's New York Office (New York Office) conducted an investigation and observed L and G Car Service, the licensee of Private Land Mobile Station WQVL958, transmitting on the frequency 154.8025 MHz at 445 Broadway, Paterson, New Jersey 07501. The license for Station WQVL958 does not authorize operation on 154.8025 MHz. A representative from L and G Car Service informed the Agents that its radio vendor, Perez Communications and Electronics, had programmed the frequency 154.8025 MHz into its radio transmitters. In a telephone conversation on February 25, 2019, Jose Perez of Perez Communications and Electronics acknowledged that he had programmed the radio transmitting equipment that L and G Car Service was operating.

III. APPLICABLE LAW AND VIOLATIONS

5. Section 90.427(b) of the Rules states that “[e]xcept for frequencies used in accordance with § 90.417, no person shall program into a transmitter frequencies for which the licensee using the transmitter is not authorized.”⁵ On February 25, 2019, agents in the New York Office determined that L and G Car Service was operating Private Land Mobile Station WQVL958 on an unauthorized frequency, which was programmed into car service's radio transmitters by Jose Perez of Perez Communications and Electronics. By programming L and G Car Service's radio transmitters with an unauthorized frequency, Mr. Perez violated section 90.427(b) of the Rules.⁶

IV. REQUEST FOR INFORMATION

6. Pursuant to sections 4(i), 4(j), and 403 of the Act,⁷ we direct Mr. Perez to provide in writing, within thirty (30) days of the release of this Citation, a timeline for any pending corrective actions. Failure to respond in writing, or the provision of an inadequate, incomplete, or misleading response, may subject Mr. Perez to additional sanctions.

V. OPPORTUNITY TO RESPOND TO THIS CITATION

7. Mr. Perez may respond to this Citation within thirty (30) calendar days from its release through any of the following methods: (1) a written statement; (2) a teleconference interview; or (3) a personal interview at the Commission Field Office nearest to his place of business. The Commission Field Office nearest to Mr. Perez's residence is located in New York City.

8. If Mr. Perez requests a teleconference or personal interview, please contact David C. Dombrowski, by telephone at: (301) 725-1996. We note that such teleconference or interview must take place within thirty (30) calendar days of the release date of this Citation. If Mr. Perez prefers to submit a written response, with supporting documentation, Mr. Perez must send the response within thirty (30) calendar days of the date of this Citation to the contact and address provided in the paragraph below.

9. All written communications, including the information requested in paragraph 6, above, should be sent to the addresses below:

⁴ 47 U.S.C. §§ 4(i) – (j), 403.

⁵ 47 CFR § 90.427(b).

⁶ *Id.*

⁷ 47 U.S.C. §§ 4(i) – (j), 403.

Federal Communications Commission
EB Columbia Regional Office
Attn: David C. Dombrowski
9050 Junction Drive
Annapolis Junction, Maryland 20701
FIELD@FCC.GOV
Re: EB-FIELDNER-17-00023860

10. Upon request, the Commission will make reasonable accommodations for persons with disabilities. If applicable, Mr. Perez should provide a description of the accommodation required, and include as much detail as possible, and also provide a telephone number and other contact information. Mr. Perez should allow at least five business days advance notice; last minute requests will be accepted, but may be impossible to fill. Mr. Perez should direct such requests, if by e-mail, to fcc504@fcc.gov, and, if by telephone, to the FCC's Consumer & Governmental Affairs Bureau:

For sign language interpreters, CART, and other reasonable accommodations:
202-418-0530 (voice), 202-418-0432 (tty);

For accessible format materials (braille, large print, electronic files, and audio format):
202-418-0531 (voice), 202-418-7365 (tty).

11. We advise Mr. Perez that it is a violation of section 1.17 of the Rules for any person or a staff member of that person to make any false or misleading written or oral statement of fact to the Commission.⁸ Specifically, no person shall:

(1) In any written or oral statement of fact, intentionally provide material factual information that is incorrect or intentionally omit material information that is necessary to prevent any material factual statement that is made from being incorrect or misleading; and

(2) In any written statement of fact, provide material factual information that is incorrect or omit material information that is necessary to prevent any material factual statement that is made from being incorrect or misleading without a reasonable basis for believing that any such material factual statement is correct and not misleading.

12. Further, the knowing and willful making of any false statement, or the concealment of any material fact in reply to this Citation is punishable by fine or imprisonment.⁹

13. Violations of section 1.17 of the Rules or the criminal statute referenced above may result in further legal action, including monetary forfeitures pursuant to section 503 of the Act.

14. Finally, we warn Mr. Perez that, under the Privacy Act of 1974,¹⁰ the Commission will use all relevant material information before it, including information disclosed in interviews or written statements, to determine what, if any, enforcement action is required to ensure Mr. Perez's compliance with the Act and the Rules.

⁸ 47 CFR § 1.17.

⁹ 18 U.S.C. § 1001.

¹⁰ 5 U.S.C. § 552a(e)(3).

VI. FUTURE VIOLATIONS

15. If, after receipt of this Citation, Mr. Perez again violates section 90.427(b) of the Rules¹¹ by engaging in the type of conduct described herein, the Commission may impose sanctions for each such violation, including monetary forfeitures. The Commission may impose forfeitures not to exceed \$20,134 for each such violation, or each day of a continuing violation, and up to \$151,005 for any single act or failure to act.¹² Further, the Commission may assess forfeitures on both the conduct that led to this Citation and the conduct that followed.¹³ In addition, future violations may subject Mr. Perez to equipment seizure through *in rem* forfeiture actions,¹⁴ as well as criminal sanctions, including imprisonment.¹⁵

VII. ORDERING CLAUSES

16. Accordingly, **IT IS ORDERED** that, pursuant to sections 4(i) and 4(j) of the Act,¹⁶ Jose Perez must cease and desist from programming into a transmitter frequencies for which the operator of the transmitter is not authorized, in violation of section 90.427(b) of the Rules.¹⁷

17. **IT IS FURTHER ORDERED** that, pursuant to sections 4(i), 4(j), and 403 of the Act,¹⁸ Jose Perez must provide the written information requested in paragraph 6, above. Jose Perez must support his responses with an affidavit or declaration made under penalty of perjury, signed and dated by Jose Perez, attesting personal knowledge of the representations provided in the response, and verifying the truth and accuracy of the information therein and that all of the information requested has been produced. All such declarations provided must comply with section 1.16 of the Rules and be substantially in the form set forth therein.¹⁹ The Commission must receive the response within thirty (30) calendar days of the release date of this Citation and Order.

18. **IT IS FURTHER ORDERED** that a copy of this Citation and Order shall be sent both by First Class U.S. Mail and Certified Mail, Return Receipt Requested, to Jose Perez at his residence in New Milford, New Jersey 07646.

FEDERAL COMMUNICATIONS COMMISSION

David C. Dombrowski
Regional Director
Region One
Enforcement Bureau

¹¹ 47 CFR § 90.427(b).

¹² See 47 U.S.C. § 503; 47 CFR § 1.80(b). This amount is subject to further adjustment for inflation. See 47 CFR § 1.80(b)(9).

¹³ See 47 U.S.C. § 503(b)(5).

¹⁴ See 47 U.S.C. § 510.

¹⁵ See 47 U.S.C. §§ 401, 501.

¹⁶ 47 U.S.C. §§ 4(i) – (j).

¹⁷ 47 CFR § 90.427(b).

¹⁸ 47 U.S.C. §§ 4(i) – (j), 403.

¹⁹ 47 CFR § 1.16.