

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

In the Matter of)	
)	
WinPR, Inc.,)	File No. EB-FIELDSCR-18-00027969
San Juan, Puerto Rico)	NAL/Acct. No.: 201932020002
)	FRN: 0028605194
)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE AND ORDER

Adopted: August 22, 2019

Released: August 22, 2019

By the Acting Field 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. WinPR, Inc. (WinPR),¹ provides wireless internet service in Puerto Rico. WinPR was apparently operating two Unlicensed National Information Infrastructure (U-NII) devices in an unauthorized manner that caused interference to an FAA terminal doppler weather radar station in San Juan, Puerto Rico. This operation was in apparent willful violation of 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 rules.³ Accordingly, we propose a penalty of \$25,000 against WinPR.

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 license requirement and sets forth conditions under which devices (intentional radiators) may operate without an individual license.⁵ Pursuant to section 15.1(b) of the Commission’s rules,

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.*

however, “operation of an intentional . . . radiator that is not in accordance with the regulations in this part *must be licensed*. . . .”⁶

3. In 2003, the Commission allocated additional spectrum for unlicensed use by U-NII devices in the 5 GHz band as a means of promoting competitive wireless broadband services.⁷ In particular, some wireless Internet service providers rely U-NII devices to provide point-to-point broadband connections within their networks. U-NII device operators are authorized to operate radio transmitters in specific portions of the 5 GHz band on an unlicensed basis, but they must comply with technical rules specific to U-NII devices to prevent harmful interference to radar stations (including the FAA’s terminal doppler weather radar system) operating in the same portions of the 5 GHz band in which U-NII devices are permitted to operate.⁸ To enable this spectrum sharing while avoiding harmful interference to government radar stations, the Commission requires, pursuant to section 15.407(h)(2) of its rules, that U-NII 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.⁹ Without Dynamic Frequency Selection enabled, a U-NII device operating on this shared spectrum can cause harmful interference to government radar stations.

4. As part of the Enforcement Bureau’s (Bureau) ongoing coordination efforts with the FAA, on November 27, 2018, Bureau personnel were investigating another potential source of interference to the FAA’s terminal doppler weather radar station and detected radio emissions in the 5.560 – 5.660 GHz band emanating from the roof of a two-story commercial building located in Carolina, Puerto Rico (Transmitter Site). Bureau personnel returned to the Transmitter Site on November 30, 2018, and spoke with the building owner, who stated that he leased space on the building’s roof to WinPR.

5. On December 11, 2018, Bureau personnel returned to the Transmitter Site and observed that transmissions in the 5.560 – 5.660 GHz band continued to emanate from that site. While the Bureau personnel were monitoring the transmissions at the Transmitter Site, one of the Bureau’s agents traveled to a private residence that also serves as WinPR’s corporate offices. There, the agent spoke with WinPR’s president, Anthony Sanchez. After explaining that WinPR might be operating a device that causes interference to the FAA’s terminal doppler weather radar station, the agent and Mr. Sanchez agreed to meet at the Transmitter Site so that Mr. Sanchez could show the agent the device’s configuration.

6. After arriving at the Transmitter Site, Mr. Sanchez used an online management tool to show the agent the configurations of WinPR’s radio located at the Transmitter Site. During this inspection, the Bureau’s agent observed that two Ubiquiti PowerBeam 5AC 620 U-NII devices (one located at the Transmitter Site and another located at a remote location) (together, the Ubiquiti Devices) were operating on the same wireless network using a center frequency of 5.655 GHz. The Bureau’s agent also observed that the Ubiquiti Devices were configured to operate in “compliance mode” (rather than under the parameters for a specific country),¹⁰ and that Dynamic Frequency Selection was not enabled. At the conclusion of the inspection, the agent and the other Bureau personnel watched as Mr. Sanchez

⁶ 47 CFR § 15.1(b) (emphasis added).

⁷ See *Revision of Parts 2 and 15 of the Commission’s Rules to Permit Unlicensed National Information Infrastructure (U-NII) Devices in the 5 GHz Band*, Report and Order, 18 FCC Rcd 24484 (2003).

⁸ See 47 CFR § 15.407.

⁹ See 47 CFR § 15.407(h)(2).

¹⁰ Many U-NII device manufacturers use the country code setting as a means of automatically configuring a device to operate with the parameters applicable to that country. Thus, setting the United States country code during the initial setup of a U-NII device is often a simple way to enable Dynamic Frequency Selection.

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 center frequency. Bureau personnel subsequently reviewed the user manual for the online management tool and confirmed that, based on the observed device settings, Dynamic Frequency Selection had not been enabled for either Ubiquiti Device when they were observed operating with a center frequency of 5.655 GHz.¹¹

7. Following the December 11, 2018, inspection, the agent reviewed the Bureau's records and determined that, on August 20, 2014, and May 14, 2018, the Bureau issued warnings to WinPR cautioning the company against operating U-NII devices within the 5.47 – 5.725 GHz (U-NII-2C) band without Dynamic Frequency Selection enabled.¹²

III. DISCUSSION

8. We find that WinPR 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.¹³ Specifically, on December 11, 2018, Bureau personnel observed that WinPR was operating the two Ubiquiti Devices on 5.655 GHz (i.e., within the U-NII-2C band) that it had configured to operate without the required Dynamic Frequency Selection capability enabled. WinPR's misconfiguration of the Ubiquiti Devices apparently violated section 15.407(h)(2) of the Commission's rules. As such, because WinPR was operating the Ubiquiti Devices on 5.655 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.¹⁴ Accordingly, because WinPR holds no license from the Commission permitting operation on 5.655 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.¹⁵

A. 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.”¹⁶ Here, section 503(b)(2)(D) of the Act authorizes us to assess a forfeiture against WinPR 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.¹⁷ In exercising our forfeiture authority, we must consider the “nature, circumstances, extent, and gravity of the violation and, with respect to the

¹¹ WinPR used Ubiquiti's airOS software to manage the devices 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 8 Operating System for Ubiquiti(r) airMAX(r) ac Series Products: User Guide, Release Version: 8, at https://dl.ubnt.com/guides/airOS/airOS_UG_V80.pdf (on file in EB-FIELDSCR-18-00027969). “DFS” was not displayed.

¹² See Letter from Reuben Jusino, Resident Agent, San Juan Office, Enforcement Bureau, to WinPR (August 20, 2014) (on file in EB-FIELDSCR-18-00027969); Letter from Ronald Ramage, Regional Director, Region Two, Enforcement Bureau, to WinPR (May 14, 2018) (on file in EB-FIELDSCR-18-00027969).

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

¹⁴ 47 CFR §§ 15.1(b), 15.407(h)(2).

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

¹⁶ 47 U.S.C. § 503(b).

¹⁷ See 47 U.S.C. § 503(b)(2)(D); 47 CFR §§ 1.80(b)(7), (9); see also *Amendment of Section 1.80(b) of the Commission's Rules, Adjustment of Civil Monetary Penalties to Reflect Inflation*, Order, 33 FCC Rcd 12278 (EB 2018).

violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.”¹⁸ 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.¹⁹ 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.²⁰

10. 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 \$10,000.²¹ On December 11, 2018, WinPR apparently operated two Ubiquiti Devices on 5.655 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.²² We find that WinPR’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 \$20,000.²³

11. 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. Based on the two prior warnings that the Bureau issued to WinPR (on August 20, 2014 and May 14, 2018), we conclude that WinPR’s apparent violations of section 301 of the Act and sections 15.1(b) and 15.407(h)(2) were intentional and warrant an upward adjustment of \$5,000.²⁴ We therefore propose an aggregate forfeiture of \$25,000 for WinPR’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

12. To preserve the integrity of the FAA’s terminal doppler weather radar station serving the San Juan International Airport, we also find that WinPR should certify its compliance with the requirements at issue in this matter. We therefore order WinPR 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 16 within thirty (30) calendar days of the release date hereof.

¹⁸ 47 U.S.C. § 503(b)(2)(E).

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

²⁰ *Id.*

²¹ *The Commission’s Forfeiture Policy Statement and Amendment to 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.

²² *See* 47 CFR § 15.1(b).

²³ *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 the proposed forfeiture to the statutory maximum because the violations were intentional, caused substantial harm to terminal doppler weather radar systems, and followed multiple prior violations), *terminated in* Order, 31 FCC Rcd 8530 (EB 2016).

²⁴ *Id.*

IV. CONCLUSION

13. We have determined that WinPR apparently willfully violated section 301 of the Act and sections 15.1(b) and 15.407(h)(2) of the Commission's rules.²⁵ As such, WinPR is apparently liable for a forfeiture of \$25,000.

V. ORDERING CLAUSES

14. Accordingly, **IT IS ORDERED** that, pursuant to section 503(b) of the Act²⁶ and section 1.80 of the Commission's rules,²⁷ WinPR, Inc., is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of Twenty-Five Thousand Dollars (\$25,000) for willful violations of section 301 of the Act,²⁸ and sections 15.1(b) and 15.407(h)(2) of the Commission's rules.²⁹

15. **IT IS FURTHER ORDERED** that, pursuant to section 1.80 of the Commission's rules,³⁰ within thirty (30) calendar days of the release date of this Notice of Apparent Liability for Forfeiture, WinPR, 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 19 below.

16. **IT IS FURTHER ORDERED** that WinPR **SHALL SUBMIT** a written statement, as described in paragraph 12, 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.

17. 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),³¹ 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:³²

- 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).³³ For additional detail and wire transfer instructions, go to <https://www.fcc.gov/licensing-databases/fees/wire-transfer>.

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

²⁶ 47 U.S.C. § 503(b).

²⁷ 47 CFR § 1.80.

²⁸ 47 U.S.C. § 301.

²⁹ 47 CFR §§ 15.1(b), 15.407(h)(2).

³⁰ 47 CFR § 1.80.

³¹ Payments made using the Commission's Fee Filer system do not require the submission of FCC Form 159.

³² 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.

³³ Instructions for completing the form may be obtained at <https://www.fcc.gov/Forms/Form159/159.pdf>.

- 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 excluded—and then choose the “Pay by Credit Card” option. Please note that there is a \$24,999.99 limit on credit card transactions.
- 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.

18. 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 20554.³⁴ 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.

19. 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.³⁵ 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.

20. 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.

21. **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 WinPR, Inc. at its address of record.

FEDERAL COMMUNICATIONS COMMISSION

Ronald Ramage
Acting Field Director
Enforcement Bureau

³⁴ See 47 CFR § 1.1914.

³⁵ 47 CFR §§ 1.16, 1.80(f)(3).