

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of)
Harold Guretzky) File No.: EB-FIELDNER-17-00024492
Licensee of Amateur Station K6DPZ) NAL/Acct. No.: 201932010005
Richmond Hill, New York) FRN: 0002000503

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: October 3, 2019

Released: October 3, 2019

By the Regional Director, Region One, Enforcement Bureau:

I. INTRODUCTION

1. Because amateur radio frequencies are shared, 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. Harold Guretzky, an amateur radio licensee, was previously warned regarding deliberate interference in writing by the Enforcement Bureau but continued interfering with other amateur radio licensees’ radio communications. Given his history as a repeat offender, this violation warrants a significant penalty. Therefore, we propose a penalty of \$17,000 against Guretzky for causing intentional interference on amateur radio frequencies.1

II. BACKGROUND

2. Guretzky is a licensee of station K6DPZ in the Amateur Radio Service in Richmond Hill, New York. The Commission has received numerous complaints alleging that he was causing interference to a local amateur repeater in Glen Oaks, New York, preventing other amateur licensees from using the repeater, in apparent violation of section 333 of the Communications Act of 1934, as amended (Act), and section 97.101(d) of the Commission’s rules.2 On June 14, 2017, in response to some of these complaints, the Bureau issued a Warning Letter advising Guretzky of the nature of the allegations against him and directing him to refrain from using the repeater going forward.3 On August 28, 2017, the Commission received additional complaints regarding Guretzky. These complaints alleged that Guretzky had again been interfering with other amateur operators on the local repeater and had begun making threats against these operators.

3. On April 19, 2018, in response to continued complaints alleging intentional interference to amateur radio communications, two agents from the New York Office of the Federal Communications Commission’s Enforcement Bureau (Bureau) drove to Richmond Hill, New York to investigate. 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. § 333; 47 CFR § 97.101(d).

3 See Letter from Laura Smith, Special Counsel, Spectrum Enforcement Division, FCC Enforcement Bureau, to Harold Guretzky (Jun. 14, 2017) (on file in EB-FIELDNER-17-00024492) (Smith Warning Letter).

agents went to Guretzky's residence and inspected his station. After the inspection, the agents advised Guretzky, in writing, that he was prohibited from using the local repeater.⁴

4. The Commission received additional complaints regarding Guretzky's continued operation on the local repeater. On October 27, 2018, an agent from the New York office again drove to Richmond Hill, New York to investigate. The agent monitored the frequencies of 146.25 MHz (the repeater input) and 146.850 MHz (the repeater output) and used direction-finding techniques to identify the source of the transmissions as Guretzky's amateur radio station, K6DPZ, which he was operating at his residence in Richmond Hill, New York. The agent monitored and recorded the transmissions emanating from Guretzky's station for several hours that afternoon and heard him interfering with the local repeater. Later, the agent heard Guretzky making threatening comments toward other amateur operators.⁵ These transmissions were a deliberate act to control the frequency and prevent other amateur radio operators from conducting legitimate communications.

5. On December 18, 2018, Regional Director David Dombrowski spoke with Guretzky via telephone. During that phone conversation, Dombrowski noted that the Commission continued to receive complaints regarding Guretzky's ongoing operation on the local repeater. Dombrowski cautioned Guretzky against transmitting on the repeater.⁶

III. DISCUSSION

6. We find that Guretzky apparently willfully violated section 333 of the Act and section 97.101(d) of the Commission's rules. Specifically, Guretzky apparently caused intentional interference to licensed Amateur Radio Service licensees.⁷

A. Guretzky's Actions Caused Intentional Interference to Licensed Communications

7. The evidence in this case is sufficient to establish that Harold Guretzky 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."⁸ 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."⁹ 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."¹⁰

8. On October 27, 2018, an agent from the New York Office observed Guretzky causing intentional interference to other amateur radio operators on frequencies 146.25 MHz (the repeater input) and 146.850 MHz (the repeater output). Guretzky thus apparently interfered with other amateur radio

⁴ E-mail from Luis Roman, Field Agent, New York Field Office, FCC Enforcement Bureau, to Harold Guretzky (Apr. 23, 2018, 12:22 ET) (on file in EB-FIELDNER-17-00024492) (Roman Email) (wherein Mr. Roman noted that, pursuant to Commission rules, the owners of the local repeater could restrict use of their repeater and advised Mr. Guretzky not to use the repeater going forward).

⁵ The case report with the agents' notes on their findings is on file in EB-FIELDNER-17-00024492.

⁶ Mr. Dombrowski's notes on this conversation are on file in EB-FIELDNER-17-00024492.

⁷ 47 U.S.C. § 333; 47 CFR § 97.101(d).

⁸ 47 U.S.C. § 333.

⁹ H.R. Rep. No. 101-316, at 8 (1989).

¹⁰ 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").

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 Guretzky's transmissions, we find that he appears to have deliberately prevented other amateur radio operators from conducting legitimate communications. Based on the evidence before us, we find that Guretzky 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. 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."¹¹ Here, section 503(b)(2)(D) of the Act authorizes us to assess a forfeiture against Guretzky 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.¹² 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."¹³ 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.¹⁴ 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.¹⁵

10. Section 1.80(b) of the Commission's rules sets a base forfeiture of \$7,000 for each day for causing interference to authorized stations.¹⁶ We have discretion, however, to depart from these guidelines, taking into account the particular facts of each individual case.¹⁷

11. In addition, given the totality of the circumstances, and consistent with the *Forfeiture Policy Statement*, we conclude that a significant upward adjustment is warranted. The Commission previously provided Guretzky with written notice that causing interference to other amateur radio operators violated the Act and Commission's rules. Having received the Smith Warning Letter and the Roman E-mail, Guretzky 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 continuing to interfere with the local repeater despite having received two (2) written notifications and one (1) oral notification from the Commission to cease this activity. Thus, we find that Guretzky'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 upward adjustment

¹¹ 47 U.S.C. § 503(b).

¹² See 47 U.S.C. § 503(b)(2)(D); 47 CFR § 1.80(b)(7); *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).

¹³ 47 U.S.C. § 503(b)(2)(E).

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

¹⁵ *Id.*

¹⁶ 47 CFR § 1.80(b).

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, 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).

of \$10,000 to the proposed forfeiture.¹⁸ 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.

12. Therefore, after applying the *Forfeiture Policy Statement*, section 1.80 of the Commission's rules, and the statutory factors, we propose a total forfeiture of \$17,000 for which Guretzky is apparently liable. We caution Guretzky that future violations of this kind may result in significantly higher forfeitures or revocation of his amateur license.

IV. CONCLUSION

13. We have determined that Harold Guretzky apparently willfully and repeatedly violated section 333 of the Act and section 97.101(d) of the Commission's rules.¹⁹ Accordingly, we find that Harold Guretzky is apparently liable for a total forfeiture of \$17,000.

V. ORDERING CLAUSES

14. Accordingly, **IT IS ORDERED** that, pursuant to section 503(b) of the Act²⁰ and section 1.80 of the Rules,²¹ Harold Guretzky is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of seventeen thousand dollars (\$17,000) for willful and repeated violations of section 333 of the Act;²² and section 97.101(d) of the Rules;²³

15. **IT IS FURTHER ORDERED** that, pursuant to section 1.80 of the Commission's rules,²⁴ within thirty (30) calendar days of the release date of this Notice of Apparent Liability for Forfeiture, Harold Guretzky **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.

16. Harold Guretzky shall send electronic notification of payment to Office of the Field Director, Enforcement Bureau, Federal Communications Commission, at field@fcc.gov on the date said payment is made. 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),²⁵ 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:²⁶

¹⁸ 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 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 violations 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).

¹⁹ 47 U.S.C. § 333. 47 CFR § 97.101(d).

²⁰ 47 U.S.C. § 503(b).

²¹ 47 CFR § 1.80.

²² 47 U.S.C. § 333.

²³ 47 CFR § 97.101(d).

²⁴ 47 CFR § 1.80.

²⁵ Payments made using the Commission's Fee Filer system do not require the submission of an FCC Form 159.

²⁶ 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.

- 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).²⁷ 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 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.

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 20554.²⁸ 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.²⁹ 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.

²⁷ Instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

²⁸ See 47 CFR § 1.1914.

²⁹ 47 CFR §§ 1.16, 1.80(f)(3).

20. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture shall be sent by first class mail and certified mail, return receipt requested, to Harold Guretzky at his address of record.

FEDERAL COMMUNICATIONS COMMISSION

David Dombrowski
Regional Director, Region One
Enforcement Bureau