

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

In the Matter of)
Jerry W. Materne) EB-FIELDSCR-17-00024994
Licensee of Amateur Radio Station KC5CSG) NAL/Acct. No. 2018320200003
Lake Charles, Louisiana) FRN: 0005652698

FORFEITURE ORDER

Adopted: March 12, 2020

Released: March 12, 2020

By the Acting Field Director, Enforcement Bureau:

I. INTRODUCTION

1. Amateur radio frequencies are shared, and licensees may not monopolize any frequency for their exclusive use. Deliberate interference and failure to transmit call sign information undermines the purpose and administration of the Amateur Radio Service by preventing communications among licensed users and inhibiting licensed users from identifying a transmission’s source. The Enforcement Bureau (Bureau) of the Federal Communications Commission previously found Jerry W. Materne apparently caused intentional interference to licensed radio operations and apparently failed to transmit his assigned call sign in the Amateur Radio Service and proposed an \$18,000 fine for those apparent statutory and regulatory violations. Materne disputes the Bureau’s findings and requests a cancellation or reduction of the proposed fine. Considering the entire record and the factors discussed below, we find no reason to cancel, withdraw, or reduce the proposed penalty, and we therefore assess Materne the \$18,000 forfeiture the Bureau previously proposed.

II. BACKGROUND

2. The Communications Act of 1934, as amended (Act), and the Commission’s Amateur Radio Service rules collectively prohibit an amateur licensee from causing willful or malicious interference to another licensee and require an amateur licensee to transmit the station’s call sign. Specifically, 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.”¹ Pursuant to section 97.101(d) of the Commission’s rules, “[n]o amateur operator shall willfully or maliciously interfere with or cause interference to any radio communication or signal.”² 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 communications, for the purpose of clearly making the source of the transmissions from the station known to those receiving the transmissions.”³

¹ 47 U.S.C. § 333.

² 47 CFR § 97.101(d).

³ See 47 CFR § 97.119(a).

3. On July 25, 2018, the Bureau issued a *Notice of Apparent Liability for Forfeiture (Notice)*⁴ against Jerry W. Materne proposing an \$18,000 forfeiture for apparent violations of section 333 of the Act,⁵ and sections 97.101(d) and 97.119(a) of the Commission's rules.⁶ In the *Notice*, the Bureau stated that its agent observed Materne causing intentional interference to a local repeater by generating digital noise into an analog radio. The Bureau further indicated that its agent observed that Materne failed to transmit his assigned call sign, KC5CSG, as required by the Commission's rules.⁷ As a result of these violations, the Bureau proposed a monetary forfeiture in the amount of \$18,000 (consisting of: a \$7,000 forfeiture for interference, a \$1,000 forfeiture for failure to provide station identification, and an upward adjustment of \$10,000 for repeated, intentional, and egregious violations of the Commission's rules.)⁸

4. On August 12, 2019, Materne filed a response to the *Notice*.⁹ Materne argues that the *Notice* should be cancelled because the Bureau's agent was mistaken in his determination that the source of the interference was Materne's station.¹⁰ Materne denies that he was responsible for causing the interference and failing to identify himself, arguing that the radio that he had in his car could not have transmitted on the frequency in question.¹¹ Finally, Materne states that he is unable to pay the forfeiture proposed in the *Notice* because he is a "disabled veteran working a part time job" and that he and his 11 year-old daughter live on disability payments.¹² He refused to provide his federal tax returns in support of his forfeiture reduction request, but instead argues that the "government can very easily examine my accounts and credit history to determine my ability to pay."¹³

III. DISCUSSION

5. The Bureau proposed a forfeiture in this case in accordance with section 503(b) of the Act,¹⁴ section 1.80 of the Commission's rules,¹⁵ and the Commission's *Forfeiture Policy Statement*.¹⁶ When we assess forfeitures, section 503(b)(2)(E) requires that we take into account 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

⁴ The *Notice* includes a more complete discussion of the facts and history of this case and is incorporated herein by reference. See *Jerry W. Materne*, Notice of Apparent Liability for Forfeiture, 33 FCC Rcd 7319 (EB 2018).

⁵ 47 U.S.C. § 333.

⁶ 47 CFR §§ 97.101(d), 97.119(a).

⁷ See *Jerry W. Materne*, Notice of Apparent Liability for Forfeiture, 33 FCC Rcd at 7321.

⁸ *Id.* at 7322.

⁹ Jerry W. Materne, Response to Notice of Apparent Liability for Forfeiture (Aug. 12, 2019) (on file in EB-FIELDSCR-17-00024994) (Response).

¹⁰ *Id.* at 1.

¹¹ *Id.* In addition, Materne states that the *Notice* incorrectly states that his vehicle was parked at the repeater site. *Id.* We note that this allegation is a plain misreading of the text of the *Notice*, which states that "the agent observed Mr. Materne enter his vehicle and drive to a location *near* a local amateur repeater, W5BII." *Notice*, 33 FCC Rcd at 7320, para. 4 (emphasis added).

¹² Response at 2.

¹³ *Id.*

¹⁴ 47 U.S.C. § 503(b).

¹⁵ 47 CFR § 1.80.

¹⁶ *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*, Memorandum Opinion and Order, 15 FCC Rcd 303 (1999).

¹⁷ 47 U.S.C. § 503(b)(2)(E).

We have fully considered the Response but find none of the arguments therein persuasive. We therefore affirm the \$18,000 forfeiture proposed in the *Notice*.

6. An agent from the New Orleans office used direction finding techniques and positively confirmed the source of the interfering transmission as Materne's vehicle. Specifically, the agent monitored the transmissions emanating from Materne's vehicle for approximately 30 minutes and heard him transmit a digital noise into an analog radio transmitting on the repeater's input frequency (146.130 MHz), and the digital noise transmissions did not include his assigned call sign. The agent approached Materne's vehicle, inspected his radio, and visually confirmed that the radio in his possession was capable of operating on the frequency in question. Specifically, the agent observed that Materne was using a Wouxun KG-UV8E model amateur radio (rather than a TYT-MD380 model amateur radio, as Materne claims in the Response).¹⁸ Despite Materne's contention that his variant of the TYT-MD380 is incapable of operating on 146.130 MHz,¹⁹ the KG-UV8E that the agent observed in Materne's possession is capable of operating on that frequency.²⁰ We therefore are unpersuaded by Materne's arguments that the proposed forfeiture should be cancelled because, he alleges, he was not the party causing the interference to the repeater and the radio in his possession could not operate on the frequency in question. As a result, we affirm the *Notice*'s finding that Materne caused intentional interference to licensed communications and failed to properly identify his station.²¹

7. We are also unpersuaded by Materne's argument that he lacks the ability to pay the full \$18,000 forfeiture proposed in the *Notice*.²² Materne failed to provide the Commission with proof of his inability to pay the proposed forfeiture, despite clear instructions in the *Notice* that the Commission would not consider such requests without corroborating documentation.²³ Accordingly, we reject his request for a reduction based on his claimed inability to pay the forfeiture proposed in the *Notice*.

IV. CONCLUSION

8. Based on the record before us, and in light of the applicable statutory factors, we conclude that Materne willfully violated section 333 of the Act and sections 97.101(d) and 97.119(a) of the Commission's rules. We further find, after considering the entire record and the factors listed above, that Materne is liable for a forfeiture in the amount of \$18,000.

V. ORDERING CLAUSES

9. Accordingly, **IT IS ORDERED** that, pursuant to section 503(b) of the Act,²⁴ and section 1.80 of the Commission's rules,²⁵ Jerry W. Materne **IS LIABLE FOR A MONETARY FORFEITURE**

¹⁸ Response at 1.

¹⁹ *Id.*

²⁰ See User Manual for KG-UV8E, wouxun.com, http://www.wouxun.com/resource/UV8DP_PEN.pdf (last visited March 6, 2020) (on file in EB-FIELDNER-17-00024994).

²¹ *Notice*, 33 FCC Rcd at 7323, para 12.

²² Response at 2.

²³ *Notice*, 33 FCC Rcd at 7324, para. 18. See, e.g., *People's Broadcast Network, LLC*, Forfeiture Order, 30 FCC Rcd 13468, 13470, para. 6 (EB 2015) (stating that "When an entity declares that it is unable to pay a proposed forfeiture, the Commission requires it to provide tax returns or other reliable financial documentation that accurately reflects the entity's current financial status. Without these documents, the entity fails to make the required showing of financial hardship.")

²⁴ 47 U.S.C. § 503(b).

²⁵ 47 CFR § 1.80.

in the amount of Eighteen Thousand Dollars (\$18,000) for willfully violating section 333 of the Act and sections 97.101(d) and 97.119(a) of the Commission's rules.²⁶

10. Payment of the forfeiture shall be made in the manner provided for in section 1.80 of the Commission's rules within thirty (30) calendar days after the release of this Forfeiture Order.²⁷ Jerry W. Materne shall send electronic notification of payment to laura.smith@fcc.gov and field@fcc.gov on the date said payment is made. If the forfeiture is not paid within the period specified, the case may be referred to the U.S. Department of Justice for enforcement of the forfeiture pursuant to section 504(a) of the Act.²⁸

11. 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),²⁹ 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:³⁰

- 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). 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.

12. 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

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

²⁷ 47 CFR § 1.80.

²⁸ 47 U.S.C. § 504(a).

²⁹ Payments made using the Commission's Fee Filer system do not require the submission of an FCC Form 159.

³⁰ 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.

Street, SW, Room 1-A625, Washington, DC 20554.³¹ Questions regarding payment procedures should be directed to the Financial Operations Group Help Desk by telephone, 1-877-480-3201, or by e-mail, ARINQUIRIES@fcc.gov.

13. **IT IS FURTHER ORDERED** that a copy of this Forfeiture Order shall be sent by first class mail and certified mail, return receipt requested, to Jerry W. Materne at his address of record.

FEDERAL COMMUNICATIONS COMMISSION

Ronald Ramage
Acting Field Director
Enforcement Bureau

³¹ See 47 CFR § 1.1914.