

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

In the Matter of)
WiFi Services Caribbean, Inc.) File No.: EB-FIELDSCR-19-00028514
San Juan, Puerto Rico) NAL/Acct. No.: 202032020004
) FRN: 0022942296
)

NOTICE OF APPARENT LIABILITY FOR FORFEITURE AND ORDER

Adopted: April 22, 2020

Released: April 22, 2020

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. WiFi Services Caribbean, Inc. (WiFi Services)1 provides wireless internet service in Puerto Rico. WiFi Services 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 WiFi Services.

II. BACKGROUND

2. Legal Framework. 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 Commission’s rules, however, “operation of an intentional . . . radiator that is not in accordance with the regulations in this part must be licensed.”6

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.

3 47 CFR §§ 15.1(b), 15.407(h)(2).

4 47 U.S.C. § 301.

5 47 CFR §§ 15.1, et seq.

6 See 47 CFR § 15.1(b) (emphasis added).

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 on 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. *Factual Background.* On May 21, 2018, the Bureau issued a written warning to WiFi Services regarding unauthorized operation of U-NII devices causing interference to the San Juan terminal doppler weather radar station.¹⁰ The agent also noted that, on December 21, 2018, he contacted WiFi Services and requested that the company respond to the May 21, 2018, warning letter.¹¹ On January 30, 2019, the company's president, Jorge M. Baragaño, responded and "certif[ied] that we have checked our entire network and that at this time believe that all of our U-NII devices are FCC certified devices for US/PR and are installed and configured properly."¹²

5. As part of the Enforcement Bureau's (Bureau) ongoing coordination efforts with the FAA, on April 3, 2019, the FAA reported that its terminal doppler weather radar station serving the San Juan International Airport was receiving interference from a source to the East-Southeast of the radar station (i.e., on an azimuth between 100° - 105° 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.

6. On May 8, 2019, Bureau personnel used direction-finding techniques and identified a potential source of interference to the terminal doppler weather radar system at the Miramar Plaza Building, 954 Avenida Juan Ponce de León, San Juan, Puerto Rico (Transmitter Site). The Transmitter Site lies along the San Juan terminal doppler weather radar station's 102° True North azimuth. At the time, however, a portion of the San Juan terminal doppler weather radar critical to the Bureau's investigation was malfunctioning; consequently, Bureau personnel could not confirm that the emissions from the Transmission Site were the cause of the interference that the FAA reported on April 3, 2019. On May 23, 2019, the FAA advised that the San Juan terminal doppler weather radar station had been repaired, and on May 27, 2019, Bureau personnel returned to the Transmitter Site and confirmed that a potential source of interference to the radar station was present at that location.

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 See Letter from Ronald Ramage, Regional Director, Region Two, FCC Enforcement Bureau, to WiFi Services Caribbean, Inc. (May 21, 2018) (on file in EB-FIELDSCR-19-00028514).

¹¹ See E-mail from Field Agent, FCC Enforcement Bureau, to Jorge M. Baragaño, President, WiFi Services Caribbean, Inc. (Dec. 21, 2018, 11:54 CT) (on file in EB-FIELDSCR-19-00028514).

¹² E-mail from Jorge M. Baragaño, President, WiFi Services Caribbean, Inc., to Field Agent, FCC Enforcement Bureau (Jan. 30, 2019, 4:34 AT) (on file in EB-FIELDSCR-19-00028514) (Baragaño E-mail).

7. On May 29, 2019, a Bureau agent and other Bureau personnel traveled to the Transmitter Site and requested that the building's manager identify the entities operating U-NII devices on the building's roof. In response, the building manager provided a list of eight companies. Because the building manager could not associate individual devices with their respective owners, and because the Bureau's agent and other personnel had not yet identified the specific device causing interference to the San Juan terminal doppler weather radar station, the building manager called the companies using the building's roof and asked that they send representatives to identify their respective equipment. Six of the eight equipment owners immediately complied and identified their equipment. The Bureau's agent and other personnel confirmed that none of the devices operated by the six companies was causing interference to the San Juan terminal doppler weather radar station.

8. On May 30, 2019, the Bureau's agent contacted the FAA, which confirmed that the San Juan terminal doppler weather radar station was still experiencing interference from the direction of the Transmitter Site. The Bureau's agent and other personnel then returned to the Transmitter Site to continue their investigation, during which time, representatives from the remaining two companies arrived at the Transmitter Site to identify their respective equipment. The Bureau's agent and other personnel then confirmed that a Ubiquiti Power Beam M5 400 Access Point (Access Point) belonging to WiFi Services was operating on a 30 MHz channel from 5.580 GHz – 5.610 GHz and was therefore associated with the interference experienced by the San Juan terminal doppler weather radar station.

9. After identifying the Access Point as a possible source of interference to the San Juan terminal doppler weather radar station, the Bureau's agent traveled to WiFi Services' corporate offices while the other Bureau personnel remained at the Transmitter Site to monitor the Access Point. At WiFi Services' corporate office, the company's owner used an online management tool to retrieve information about the Access Point's configuration. The Bureau's agent observed that two additional Ubiquiti devices (Stations) were configured to communicate with the Access Point. The agent further observed that, although the Access Point appeared to be properly configured with the United States country code and Dynamic Frequency Selection, the Stations were configured to operate with their country codes set as "Compliance Test" and did not have Dynamic Frequency Selection enabled. After making these observations, the Bureau's agent instructed WiFi Services to alter the configuration of the devices to operate on a different frequency. WiFi Services complied, whereupon the Bureau personnel monitoring the Access Point at the Transmitter Site reported an immediate cessation of transmissions on 5.580 GHz – 5.610 GHz. The Bureau's agent then contacted the FAA, which confirmed that the San Juan terminal doppler weather radar station was no longer experiencing interference in the direction of the Transmitter Site.

III. DISCUSSION

10. We find that WiFi Services 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 May 30, 2019, a Bureau agent and other Bureau personnel observed that WiFi Services was operating the Access Point¹⁴ and Stations on 5.580 GHz – 5.610 GHz (i.e., within the U-NII-2C band) and that the Stations were not configured with Dynamic Frequency Selection enabled. WiFi Services' misconfiguration of the Stations apparently violated section 15.407(h)(2) of the Commission's rules. Because WiFi Services was operating the Stations on 5.580 GHz – 5.610 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.¹⁵ Accordingly, because WiFi Services holds no license from the Commission

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

¹⁴ Because the Access Point was configured with the United States country code properly set and Dynamic Frequency Selection apparently enabled, we do not include it among WiFi Services' apparent violations.

¹⁵ 47 CFR §§ 15.1(b), 15.407(h)(2).

permitting operation on 5.580 GHz – 5.610 GHz without Dynamic Frequency Selection, we find that its operation of the Stations 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.¹⁶

A. Proposed Forfeiture

11. 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.”¹⁷ Here, section 503(b)(2)(D) of the Act authorizes us to assess a forfeiture against WiFi Services of up to \$20,489 for each day of a continuing violation, up to a statutory maximum of \$153,669 for a single act or failure to act.¹⁸ 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.”¹⁹ 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.²⁰ 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.²¹

12. 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 \$10,000.²² On May 30, 2019, WiFi Services apparently operated the Stations on 5.580 GHz – 5.610 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.²³ We find that WiFi Services’ 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 \$20,000.²⁴

13. 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 prior warning that the Bureau issued to WiFi Services on May 21, 2018, coupled with the company’s statement on January 30,

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

¹⁷ 47 U.S.C. § 503(b).

¹⁸ 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, 34 FCC Rcd 12824 (EB 2019).

¹⁹ 47 U.S.C. § 503(B)(2)(E).

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

²¹ *Id.*

²² *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.

²³ See 47 CFR § 15.1(b).

²⁴ 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).

2019 that all of its U-NII devices were “installed and configured properly,”²⁵ we conclude that WiFi Services’ apparent violations of section 301 of the Act and sections 15.1(b) and 15.407(h)(2) were egregious and warrant an upward adjustment of \$5,000.²⁶ We therefore propose an aggregate forfeiture of \$25,000 for WiFi Services’ 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

14. To preserve the integrity of the FAA’s terminal doppler weather radar station serving the San Juan International Airport, we also find that WiFi Services should certify its compliance with the requirements at issue in this matter. We therefore order WiFi Services 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, in fact,²⁷ 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 21 within thirty (30) calendar days of the release date hereof.

IV. CONCLUSION

15. We have determined that WiFi Services apparently willfully violated section 301 of the Act and sections 15.1(b) and 15.407(h)(2) of the Commission’s rules.²⁸ As such, WiFi Services is apparently liable for a forfeiture of \$25,000.

V. ORDERING CLAUSES

16. Accordingly, **IT IS ORDERED** that, pursuant to section 503(b) of the Act²⁹ and section 1.80 of the Commission’s rules,³⁰ WiFi Services Caribbean, 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 Act³¹ and sections 15.1(b) and 15.407(h)(2) of the Commission’s rules.³²

17. **IT IS FURTHER ORDERED** that, pursuant to section 1.80 of the Commission’s rules,³³ within thirty (30) calendar days of the release date of this Notice of Apparent Liability for Forfeiture, WiFi Services Caribbean, 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 21 below.

18. **IT IS FURTHER ORDERED** that WiFi Services Caribbean, Inc. **SHALL SUBMIT** a written statement, as described in paragraph 14, 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

²⁵ Baragaño E-mail; *see* para. 4, *supra*.

²⁶ *Id.*

²⁷ We note that on January 30, 2019, WiFi Services qualified its certification regarding the configuration of its U-NII devices as a certification of its “belief” that it was complying with the Act and the Commission’s rules. *See* para. 4, *supra*. When complying with the reporting requirements set forth above, any statement submitted must be factual in nature. We caution WiFi Services that a statement of its beliefs regarding the status of its U-NII devices will not satisfy the reporting requirement.

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

²⁹ 47 U.S.C. § 503(b).

³⁰ 47 CFR § 1.80.

³¹ 47 U.S.C. § 301.

³² 47 CFR §§ 15.1(b), 15.407(h)(2).

³³ 47 CFR § 1.80.

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.

19. WiFi Services Caribbean, Inc. shall send electronic notification of payment to the 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),³⁴ 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:³⁵

- 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).³⁶ 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.

20. 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 20554.³⁷ 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.

³⁴ Payments made using the Commission's Fee Filer system do not require the submission of an FCC Form 159.

³⁵ 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.

³⁶ Instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

³⁷ See 47 CFR § 1.1914.

21. 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.³⁸ 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 matthew.gibson@fcc.gov and field@fcc.gov.

22. 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.

23. **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 Mr. Jorge M. Baragaño, President, WiFi Services Caribbean, Inc., 808 Avenida Fernandez Juncos, San Juan, Puerto Rico 00907.

FEDERAL COMMUNICATIONS COMMISSION

Ronald Ramage
Acting Field Director
Enforcement Bureau

³⁸ 47 CFR §§ 1.16, 1.80(f)(3).