

**Before the
Federal Communications Commission
Washington, DC 20554**

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| In the Matter of |) | |
| |) | |
| |) | File No.: EB-FIELDSCR-19-00029574 |
| Buzzer Net LLC |) | NAL/Acct. No.: 202032020006 |
| San Juan, Puerto Rico |) | FRN: 0029484870 |

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. Buzzer Net LLC (Buzzer Net)¹ provides wireless internet service in Puerto Rico. Buzzer Net was apparently operating an Unlicensed National Information Infrastructure (U-NII) device 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 Buzzer Net.

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 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, 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

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 See 47 CFR §§ 15.1, *et seq.*

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).

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 October 3, 2017, an Enforcement Bureau (Bureau) agent cautioned Buzzer Net against operating a U-NII device that causes harmful interference to the FAA terminal doppler weather radar system in San Juan, Puerto Rico.¹⁰ On June 28, 2018, the Bureau issued a written warning to Buzzer Net, advising the company that operating an unlicensed radio transmitter violated section 301 of the Act and operating U-NII devices outside the parameters of its equipment certification violated part 15 of the Commission's rules.¹¹

5. As part of the Bureau's ongoing coordination efforts with the FAA, on May 30, 2019, the FAA reported to the Bureau 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 of 98° True North).¹² 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 June 3 and 4, 2019, Bureau personnel used direction-finding techniques and determined that radio emissions on 5.620 – 5.640 GHz were emanating from the roof of the "Red Mango Building," 101 Fortaleza, San Juan, Puerto Rico (Transmitter Site).¹³ The Transmitter Site lies along the San Juan terminal doppler weather radar station's 98° True North azimuth.

7. On June 4, 2019, Bureau personnel were stationed at the Transmitter Site and observed that the cable from the U-NII antenna entered a tenant's penthouse condominium unit in the neighboring building, the Joyería Catalina Building.¹⁴ They contacted the tenant who granted them access to the condominium. The tenant also informed the agent that Buzzer Net was the wireless internet service provider.¹⁵

8. Bureau personnel met with a Buzzer Net technician to verify the configuration settings of the company's U-NII equipment at the Transmitter Site. They observed that Buzzer Net's system

⁸ 47 CFR § 15.407.

⁹ *Id.* § 15.407(h)(2).

¹⁰ E-mail from Field Agent, Dallas Office, FCC Enforcement Bureau, to Buzzer Net LLC (Oct. 3, 2017, 12:21 CT) (on file in EB-FIELDNER-19-00029574).

¹¹ See Warning for Unlicensed Radio Operation from Ronald Ramage, Regional Director, Region Two, FCC Enforcement Bureau, to Buzzer Wireless Network (June 28, 2018) (on file in case no EB-FIELDSCR-17-00025312).

¹² See Field Agent's Investigation Report (on file in EB-FIELDNER-19-00029574).

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

included the following Ubiquiti devices: a Rocket Prism 5AC Gen2 (Access Point) and a Power Beam 5AC Gen2 (Station, and with the Access Point, collectively, the Ubiquiti Devices).¹⁶ The Access Point was configured to operate using the Argentina country code, and the Station was configured to operate using the “Licensed” country code.¹⁷ The Ubiquiti Devices were configured to operate on a 20 MHz channel centered on 5.630 GHz.¹⁸ The Bureau personnel further observed the Ubiquiti Devices had no option to select the United States or Puerto Rico as the country code and were not operating with Dynamic Frequency Selection as required under the Commission’s rules.¹⁹ The Bureau personnel told the Buzzer Net technician that Buzzer Net could only use U-NII devices that were configured with the country code set as the “United States” in compliance with Commission’s rules.²⁰ Buzzer Net responded that it would make the appropriate changes. When the Buzzer Net technician deleted “Argentina” as the country code and turned off the Ubiquiti Devices, the Bureau personnel observed that the interference to San Juan’s terminal doppler weather radar station appeared to cease.

III. DISCUSSION

9. We find that Buzzer Net 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.²¹ Specifically, on June 4, 2019, Bureau personnel observed that Buzzer Net was operating the Ubiquiti Devices on 5.630 GHz (i.e., within the U-NII-2C band) that it had configured to operate without the required Dynamic Frequency Selection capability enabled. Buzzer Net’s misconfiguration of the Ubiquiti Devices apparently violated section 15.407(h)(2) of the Commission’s rules. Because Buzzer Net was operating the Ubiquiti Devices on 5.630 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.²² Accordingly, because Buzzer Net holds no license from the Commission permitting operation on 5.630 GHz without Dynamic Frequency Selection, we find that its operation of the 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.²³

A. Proposed Forfeiture

10. 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.”²⁴ Here, section 503(b)(2)(D) of the Act authorizes us to assess a forfeiture against Buzzer Net of up to \$20,489 for each day of a continuing violation, up to a

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.* Buzzer Net 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® airMAX® ac Series Products: User Guide, Release Version: 8, at https://dl.ubnt.com/guides/airOS/airOS_UG_V80.pdf (on file in EB-FIELDSCR-19-00029574). “DFS” was not displayed.

²⁰ See Field Agent’s Investigative Report (on file in EB-FIELDSCR-19-00029574).

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

²² 47 CFR §§ 15.1(b), 15.407(h)(2).

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

²⁴ 47 U.S.C. § 503(b).

statutory maximum of \$153,669 for a single act or failure to act.²⁵ 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.”²⁶ 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.²⁷ 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.²⁸

11. 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 \$10,000.²⁹ Because, on June 3, 2019, Buzzer Net apparently operated the two Ubiquiti Devices on 5.630 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,³⁰ we find that Buzzer Net’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 \$20,000.³¹

12. 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 Buzzer Net on October 3, 2017, and June 28, 2018, we conclude that Buzzer Net’s 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 \$5,000.³² We therefore propose an aggregate forfeiture of \$25,000 for Buzzer Net’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

13. To preserve the integrity of the FAA’s terminal doppler weather radar station serving the San Juan International Airport, we also find that Buzzer Net should certify its compliance with the requirements at issue in this matter. We therefore order Buzzer Net 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

²⁵ 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).

²⁶ 47 U.S.C. § 503(b)(2)(E).

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

²⁸ *Id.*

²⁹ *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.

³⁰ See 47 CFR § 15.1(b).

³¹ 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).

³² *Id.*

authorizations. This statement must be provided to the Enforcement Bureau at the address listed in paragraph 17 within thirty (30) calendar days of the release date hereof.

IV. CONCLUSION

14. We have determined that Buzzer Net apparently willfully violated section 301 of the Act and sections 15.1(b) and 15.407(h)(2) of the Commission's rules.³³ As such, Buzzer Net is apparently liable for a forfeiture of \$25,000.

V. ORDERING CLAUSES

15. Accordingly, **IT IS ORDERED** that, pursuant to section 503(b) of the Act³⁴ and section 1.80 of the Commission's rules,³⁵ Buzzer Net LLC is hereby **NOTIFIED** of its **APPARENT LIABILITY FOR A FORFEITURE** in the amount of Twenty-Five Thousand Dollars (\$25,000) for willful violations of section 301 of the Act³⁶ and sections 15.1(b) and 15.407(h)(2) of the Commission's rules.³⁷

16. **IT IS FURTHER ORDERED** that, pursuant to section 1.80 of the Commission's rules,³⁸ within thirty (30) calendar days of the release of this Notice of Apparent Liability for Forfeiture and Order, Buzzer Net LLC **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 20 below.

17. **IT IS FURTHER ORDERED** that Buzzer Net LLC **SHALL SUBMIT** a written statement, as described in paragraph 13, 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 e-mail to field@fcc.gov and Joy Ragsdale, joy.ragsdale@fcc.gov.

18. Buzzer Net LLC, shall send electronic notification of payment to the Office of the Field Director, Enforcement Bureau, Federal Communications Commission, at field@fcc.gov and Joy Ragsdale, Field Counsel, at joy.ragsdale@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),³⁹ 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:⁴⁰

- 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

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

³⁴ 47 U.S.C. § 503(b).

³⁵ 47 CFR § 1.80.

³⁶ 47 U.S.C. § 301.

³⁷ 47 CFR §§ 15.1(b), 15.407(h)(2).

³⁸ *Id.* § 1.80.

³⁹ Payments made using the Commission's Fee Filer system do not require the submission of FCC Form 159.

⁴⁰ 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.

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).⁴¹ 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.

19. 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 20554.⁴² 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.

20. 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.⁴³ 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 and Joy Ragsdale, joy.ragsdale@fcc.gov.

21. 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.

⁴¹ Instructions for completing the form may be obtained at <https://www.fcc.gov/Forms/Form159/159.pdf>.

⁴² 47 CFR § 1.1914.

⁴³ *Id.* §§ 1.16, 1.80(f)(3).

22. **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 Hector Negrón, President, Buzzer Net LLC, 155 Arterial Hostos, Golden Court II F202, San Juan, Puerto Rico 00918.

FEDERAL COMMUNICATIONS COMMISSION

Ronald Ramage
Acting Field Director
Enforcement Bureau