

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

In the Matter of)

Joseph S. McCreary)
3305 Bayou Boulevard)
Pensacola, FL 32503)

File Number EB-01-TP-399
NAL/Acct.No.200232700006

FRN: 0006-9319-84

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: May 7, 2002

By the Enforcement Bureau, Tampa Office:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture, we find that Mr. Joseph S. McCreary apparently violated Section 95.411 of the Federal Communications Commission's ("FCC") Rules¹ by using an external radio frequency power amplifier ("linear amplifier") as part of his Citizens Band Radio ("CB") station. We conclude that Joseph S. McCreary is apparently liable for a forfeiture in the amount of five thousand dollars (\$5,000).

II. BACKGROUND

2. On September 26, 2001, the FCC Enforcement Bureau's Tampa Field Office ("Tampa Office") received complaint letters dated September 13 and 14, 2001. The complaint concerned interference to consumer home electronic entertainment devices allegedly caused by the operation of a CB radio station operated by Mr. McCreary. The complaint also alleged that Mr. McCreary used a 1,000 watt linear amplifier. The complaint stated that other neighbors were also affected by the interference.

3. On December 17, 2001, the Office of Congressman Jeff Miller referred this same complaint to the Tampa Office.

4. On March 11, 2002, agents from the Tampa Office went to 3305 Bayou Boulevard, Pensacola, Florida, the address stated in the complaint as the location of Mr. McCreary's CB radio station, to investigate the complaint. Upon arrival at this address, the agents spoke with Mr. McCreary and conducted an inspection of Mr. McCreary's CB radio station located inside his residence. The agents observed a Varmint Bilinear Quad Power Base linear amplifier; model XL 1000, attached to a CB transceiver. The agents saw a coaxial cable interconnecting the linear amplifier and the CB radio. Mr. McCreary turned on the CB radio station at the agents' request. With the transmitter powered on, the agents observed the power amplifier meter display a reading of "2" on a scale of one to ten. Mr. McCreary admitted to the agents that he had been operating the station with the attached linear amplifier

¹ 47 C.F.R. § 95.411

at a power of at least twenty watts. Based on the power meter reading and Mr. McCreary's statements, the agents concluded the power output of the station was approximately 20 watts. A search of Commission records showed that Mr. McCreary holds no license in any radio service that would allow him to operate an external RF power amplifier.

III. DISCUSSION

5. Section 95.411(a)(1) of the Commission's Rules prohibits attaching a power amplifier to a CB transmitter in any way.² Furthermore, pursuant to Section 95.411(c), there is a presumption that a linear or other external RF power amplifier has been used if it is found in the possession of, or on the premises of, the CB radio station and there is other evidence that the CB station has been operated with more power than allowed by the Rules.³ In this case, Mr. McCreary's CB radio station consisted of a CB transceiver with an attached linear amplifier. Also, there was other evidence that Mr. McCreary's CB radio station had operated with more power than allowed by the Rules; namely that the operation of the CB radio station caused interference to neighborhood electronic equipment, Mr. McCreary's admission that he used a linear amplifier attached to his CB radio, Mr. McCreary's admission that his station's power output was at least twenty watts, and the readout of the power meter during the station inspection. Based on the evidence before us, we find that on March 11, 2002, Mr. Joseph S. McCreary willfully⁴ violated Section 95.411 of the Rules⁵ by using an external radio frequency power amplifier as part of his Citizen Band radio station.

6. Pursuant to Section 1.80(b)(4) of the Commission's Rules, the base forfeiture amount for the violation cited in this notice is \$5,000 (use of unauthorized equipment).⁶ Section 503(b)(2)(D) of the Act requires us to 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 other such matters as justice may require."⁷ Considering the entire record and applying the statutory factors listed above, this case warrants a \$5,000 forfeiture.

IV. ORDERING CLAUSES

7. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Communications Act of 1934, as amended,⁸ and Sections 0.111, 0.311 and 1.80 of the Commission's Rules,⁹ Mr. Joseph S.

² 47 C.F.R. § 95.411(a)(1)

³ 47 C.F.R. § 95.411(c)

⁴ Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies equally to Section 503(b) of the Act, provides that "[t]he term 'willful,' when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act" See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

⁵ 47 C.F.R. § 95.411

⁶ 47 C.F.R. § 1.80(b)(4)

⁷ 47 U.S.C. § 503(b)(2)(D)

⁸ 47 U.S.C. § 503(b).

⁹ 47 C.F.R. §§ 0.111, 0.311, 1.80.

McCreary is hereby NOTIFIED of his APPARENT LIABILITY FOR A FORFEITURE in the amount of five thousand dollars (\$5,000) for willful violation of Section 95.411 of the Commission's Rules.¹⁰

8. IT IS FURTHER ORDERED THAT, pursuant to Section 1.80 of the Commission's Rules,¹¹ within thirty days of the release date of this NOTICE OF APPARENT LIABILITY, Mr. Joseph S. McCreary SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

9. Payment of the forfeiture may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note the NAL/Acct. No.200232700006 and FRN No. 0006-9319-84 referenced in the letterhead above.

10. The response, if any, must be mailed to Federal Communications Commission, Office of the Secretary, 445 12th Street, SW, Washington, DC 20554, Attn: Enforcement Bureau-Technical & Public Safety Division, and MUST INCLUDE THE NAL/Acct. No.200232700006 and FRN No. 0006-9319-84 referenced in the letterhead above.

11. 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 ("GAAP"); 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 submitted.

12. Requests for payment of the full amount of this Notice of Apparent Liability under an installment plan should be sent to: Federal Communications Commission, Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.¹²

13. IT IS FURTHER ORDERED THAT a copy of this NOTICE OF APPARENT LIABILITY shall be sent by Certified Mail Return Receipt Requested to Mr. Joseph S. McCreary at 3305 Bayou Boulevard, Pensacola, Florida, 32503.

FEDERAL COMMUNICATIONS COMMISSION

Ralph M. Barlow

¹⁰ 47 C.F.R. § 95.411

¹¹ 47 C.F.R. § 1.80.

¹² See 47 C.F.R. § 1.1914.

District Director, Tampa Office
Enforcement Bureau