

Federal Communications Commission

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

In the Matter of

Jeffrey Alan Pettrey
Princeton, WV

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File No. EB-01-CF-148

NAL/Acct. No. 200132340003

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: July 30, 2001

By the District Director, Columbia Office, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture ("NAL"), we find that Jeffrey Alan Pettrey ("Pettrey") has apparently violated Section 301 of the Communications Act of 1934 ("Act"),¹ as amended, by operating an unlicensed radio transmitter on frequency 27.575 MHz. We conclude that Jeffrey Alan Pettrey is apparently liable for forfeiture in the amount of ten thousand dollars (\$10,000).

II. BACKGROUND

2. On March 28, 2001, Agents Richard Caine and Donald Bogert, of the Commission's Columbia Office, while conducting enforcement work in Princeton, WV, observed unauthorized radio operations on 27.575 MHz. The frequency band 27.540-28.000 MHz is allocated for use by the United States Government, and the aeronautical and maritime services. There was no evidence of a Commission authorization for this operation.

3. Agents Caine and Bogert made a positive identification of the source of the unauthorized transmissions to the residence of Jeffrey Alan Pettrey, 4014 West Main Street, Princeton, WV 24740. The agents requested and were given permission to inspect the radio station by Pettrey. Pettrey's radio, a Galaxy DX 2517, was set to frequency 27.575 MHz with a Maverick 250 radio frequency (RF) power amplifier attached in line. The carrier power output of the radio station was 100 watts.

¹ 47 U.S.C. § 301.

III. DISCUSSION

4. Section 301 of the Act sets forth generally that no person shall use or operate any apparatus for the transmission of energy or communications or signals by radio within the United States except under and in accordance with the Act and with a license granted under the provisions of the Act.

5. Operation on a frequency adjacent to CB Service frequencies is not authorized by the CB rules. The radio used by Pettrey is not FCC certificated. Further, Pettrey voided his authorization to operate a CB radio station by using a radio not FCC certificated and by using a power amplifier, in violation of Sections 95.409 and 95.411 of the Commission's Rules.²

6. Based on the evidence before us, we find that on March 28, 2001, Jeffrey Alan Pettrey operated radio transmission apparatus without a Commission authorization in willful³ violation of Section 301 of the Act.

7. *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines* ("Forfeiture Policy Statement"), set the base forfeiture amounts of \$10,000 for unlicensed operation.⁴ In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(D) of the Act, which include the nature, circumstances, extent, and gravity of the violation(s), 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.⁵ After applying the *Forfeiture Policy Statement* and statutory factors to the instant case, we believe a \$10,000 forfeiture is warranted.

IV. ORDERING CLAUSES

8. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Act⁶ and Sections 0.111, 0.311 and 1.80 of the Rules⁷, Jeffrey Alan Pettrey is hereby NOTIFIED of his APPARENT LIABILITY FOR A FORFEITURE in the amount of ten thousand dollars (\$10,000) for willfully violating Section 301 of the Act.

² 47 C.F.R. §§ 95.409 and 95.411.

³ Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies 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).

⁴ 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999).

⁵ 47 U.S.C. § 503(b)(2)(D).

⁶ 47 U.S.C. § 503(b).

⁷ 47 C.F.R. §§ 0.111, 0.311 and 1.80.

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

10. 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. 200132340003.

11. Any response to this NAL must be mailed to Federal Communications Commission, Enforcement Bureau, Technical and Public Safety Division, 445 12th Street, S.W., Washington, D.C. 20554 and MUST INCLUDE THE NAL/Acct. No. 200132340003

12. 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.

13. Requests for payment of the full amount of this Notice of Apparent Liability under an installment plan should be sent to: Chief, Revenue and Receivable Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.⁸

14. IT IS FURTHER ORDERED THAT a copy of this NOTICE OF APPARENT LIABILITY shall be sent by Certified Mail Return Receipt Requested to Jeffrey Alan Pettrey, 4014 West Main Street, Princeton, WV 24740.

FEDERAL COMMUNICATIONS COMMISSION

Charles C. Magin
District Director
Columbia Office

⁸ See 47 C.F.R. § 1.1914.