

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

In the Matter of)
Jay Peralta,) File No. EB-FIELDNER-16-00022343
Corona, New York) NAL/Acct. No.: 201732380002
) FRN: 0026136218

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: April 13, 2017

Released: April 14, 2017

By the Commission: Chairman Pai issuing a statement.

I. INTRODUCTION

1. We propose a forfeiture in the amount of \$404,166 against Jay Peralta for apparently operating a radio on frequencies licensed to the New York City Police Department (NYPD) without authorization from the Commission, maliciously interfering with NYPD officers' communications, and transmitting false distress calls.

II. BACKGROUND

2. According to a police report provided to the Commission, the NYPD occasionally experiences unauthorized transmissions by third parties on frequencies that the Commission has licensed to the NYPD. Today's action by the Commission addresses nine unauthorized and interfering transmissions that Mr. Peralta admitted to the NYPD he made on its radio system.

3. On August 1, 2016, the Commission was alerted by a posting on Twitter about an unlawful intrusion on the NYPD's radio system, whereupon the Enforcement Bureau dispatched an agent from its New York Field Office (New York Office) to confirm the intrusion and offer assistance.

1 The NYPD holds numerous licenses issued by the Commission. Today's action by the Commission relates to Mr. Peralta's unauthorized transmissions on frequencies licensed for the NYPD's use under call signs WIF539, WIF542, WIF573, WIF575, and WIF577.

2 Memorandum from Lt. Marc Moreno, LIU, NYPD to DCI/Chief of Intelligence, 1 (Sept. 26, 2016) (on file in EB-FIELDNER-16-00022343) (NYPD Report).

3 Id.

4 @joshzepps, Twitter (Aug. 1, 2016, 6:51am), https://twitter.com/joshzepps/status/760110817517920256.

individuals, Mr. Peralta and an accomplice, in connection with unauthorized transmissions made on the NYPD's radio system.

4. As detailed in the NYPD Report, a copy of which was provided to the Commission, during a September 26, 2016, interrogation by the NYPD, Mr. Peralta admitted to making so-called "10-13" (Officer Needs Emergency Assistance) and "10-85" (Officer Needs Assistance) calls on the NYPD's radio system.⁵ In connection with a written statement Mr. Peralta composed during his interrogation by the NYPD, a NYPD officer presented Mr. Peralta with a list of intrusions on its radio system.⁶ Mr. Peralta then inscribed his initials on the NYPD list as an acknowledgment of having made nine of the intrusions identified on the NYPD list.⁷ That same day, the NYPD arrested Mr. Peralta on a range of charges, including reckless endangerment, robbery, criminal impersonation of a police officer, and false reporting of an incident.⁸ Based on the information obtained during its investigation, the NYPD requested and obtained a search warrant from a New York court for Mr. Peralta's residence and, upon execution of the search warrant, seized a radio and tactical vest.⁹ For ease of reference, the unauthorized transmissions Mr. Peralta acknowledged making in his written statement are summarized in Exhibit A.

III. DISCUSSION

A. Mr. Peralta Apparently Violated Section 301 of the Communications Act of 1934, as amended, by Making Unauthorized Transmissions on Spectrum Licensed to the NYPD.

5. We find that Mr. Peralta, by his own admission, apparently willfully and repeatedly violated Section 301 of the Communications Act of 1934, as amended (Act). Section 301 of the Act states that no person shall use or operate any apparatus for the transmission of energy or communications or signals by radio within the United States without a license granted by the Commission.¹⁰ Section 503(b) of the Act provides that any person who willfully or repeatedly fails to comply substantially with the terms and conditions of any license, or willfully or repeatedly fails to comply with any of the provisions of the Act or of any rule, regulation, or order issued by the Commission thereunder, shall be liable for a forfeiture penalty.¹¹ Section 312(f)(1) of the Act defines "willful" as the "conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate" the law.¹² The Commission may

⁵ NYPD Report at 3. As used by the NYPD, the transmission of a 10-85 code indicates that an NYPD officer is in need of assistance. See *Carin v. City of New York*, No. 95 Civ. 3472, 1998 WL 60952 (E.D.N.Y., 1998). By contrast, the transmission of a 10-13 code is more serious and represents a "radio call for officer assistance during which all non-priority radio transmission must be suspended." *Cox v. Ebert*, No. 06 Civ. 3159, 2010 WL 3119445, at *11, n. 19 (S.D.N.Y. 2010).

⁶ Statement of Jay Peralta, 1 – 3 (on file in EB-FIELDNER-16-00022343) (Peralta Statement). The Peralta Statement is comprised of (a) three handwritten pages and (b) a copy of a three-page NYPD-produced document, titled "Unauthorized Timeline," on to which Mr. Peralta inscribed his initials.

⁷ NYPD Report at 3.

⁸ *Id.* at 4.

⁹ *Id.* at 3.

¹⁰ 47 U.S.C. § 301.

¹¹ 47 U.S.C. § 503(b).

¹² 47 U.S.C. § 312(f)(1). The legislative history to Section 312(f)(1) of the Act clarifies that this definition of willful applies to both Sections 312 and 503(b) of the Act, and the Commission has so interpreted the term in the Section 503(b) context. H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982) ("This provision [inserted in Section 312] defines the terms 'willful' and 'repeated' for purposes of section 312, and for any other relevant section of the act (e.g., Section 503) As defined[,] . . . 'willful' means that the licensee knew that he was doing the act in question, regardless of whether there was an intent to violate the law. 'Repeated' means more than once, or where the act is continuous, for more than one day. Whether an act is considered to be 'continuous' would depend upon the circumstances in

(continued....)

also assess a forfeiture for violations that are merely repeated, and not willful.¹³ The term “repeated” means the commission or omission of such act more than once or for more than one day.¹⁴

6. Based on the record before us, Mr. Peralta, who is not a Commission licensee, has apparently willfully and repeatedly violated Section 301 of the Act on nine occasions when, by his own admission, he operated a radio transmitter on frequencies for which a Commission license is required.¹⁵ The Peralta Statement is replete with statements indicating that Mr. Peralta acted willfully through his conscious and deliberate efforts to use frequencies licensed to the NYPD to communicate directly with NYPD officers or NYPD radio dispatchers.¹⁶ We also find that Mr. Peralta apparently repeatedly violated Section 301 of the Act by making unauthorized transmissions on different days or, when he made multiple transmissions on the same day, switching transmission frequencies in order to “ensure maximum attention”¹⁷ from different NYPD precincts, sometimes while assisting in the commission of criminal activities.¹⁸

B. Mr. Peralta Apparently Violated Section 333 of the Act by Interfering with NYPD’s Use of Licensed Spectrum.

7. We find that Mr. Peralta apparently willfully and repeatedly violated Section 333 of the Act. 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 stations licensed or authorized by or under the Act or operated by the United States Government.”¹⁹ The legislative history for Section 333 of the Act provides a number of examples of willful and malicious interference: “intentional jamming, deliberate transmission on top of the transmissions of authorized users already using specific frequencies in order to obstruct their communications, repeated interruptions, and the use and transmission of whistles, tapes, records, or other types of noisemaking devices to interfere with the communications or radio signals of other stations.”²⁰

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each case. The definitions are intended primarily to clarify the language in Sections 312 and 503, and are consistent with the Commission’s application of those terms”); *see, e.g., S. Cal. Broad. Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388, para. 5 (1991), *recons. denied*, 7 FCC Rcd 3454 (1992).

¹³ *See, e.g., Callais Cablevision, Inc.*, Notice of Apparent Liability for Monetary Forfeiture, 16 FCC Rcd 1359, 1362, para. 10 (2001) (proposing a forfeiture for, *inter alia*, a cable television operator’s repeated signal leakage) (*Callais Cablevision*), *forfeiture ordered*, Forfeiture Order, 17 FCC Rcd 22626 (2002).

¹⁴ *See* 47 U.S.C. § 312(f)(2); *Callais Cablevision*, 16 FCC Rcd at 1362, para. 9.

¹⁵ *See, e.g., Jason Humphreys, Seffner, Florida*, Forfeiture Order, 31 FCC Rcd 6123, para. 1 (2016) (affirming a proposed forfeiture for violations of Section 301 of the Act stemming from the operation of a radio jammer on frequencies allocated for use by public safety entities); *Drew Buckley, Bay Shore, New York*, Notice of Apparent Violation for Forfeiture, 29 FCC Rcd 7586, 7588, para. 8 (EB 2014), *forfeiture ordered*, Forfeiture Order, 30 FCC Rcd 165 (EB 2015) (finding an apparent violation of Section 301 of the Act where an individual operated, without a license, on frequencies allocated for use by public safety entities).

¹⁶ By way of example: “I Jay Peralta *keyed upon* Manhattan South Captain,” and “I *said on radio* 19th floor central and Unit [illegible] . . . said 10-85 male has sawed off shotgun” Peralta Statement at 2 (emphasis added).

¹⁷ *See* NYPD Report at 2. Separately, the NYPD explained to Commission personnel that within the NYPD, it manages its licensed frequencies, such that officers use specific frequencies when operating in different NYPD-defined geographic zones (which often span multiple precincts). *See* Email from Scott Semone, M.R.R.O., I.T.B. Life-Safety Systems & Electronics Division, NYPD to Luis Roman, Field Agent, Enforcement Bureau, FCC (Oct. 13, 2016). In light of the NYPD’s internal spectrum management practices, multiple precincts received Mr. Peralta’s unauthorized transmissions, thus corroborating Mr. Peralta’s statement to the NYPD that the goal of the unauthorized transmissions was “to ensure maximum attention from the NYPD.”

¹⁸ *See generally* Exhibit A.

¹⁹ 47 U.S.C. § 333.

²⁰ H.R. Rep. No. 101-316, at 8 (1989).

In the context of interference to public safety communications, the Commission has noted that unauthorized transmissions on public safety frequencies violate Section 333 of the Act when the unauthorized transmissions disrupt communications between public safety personnel and central dispatchers while the frequencies were being used to respond to an emergency.²¹ For example, in *Buckley*, a monetary forfeiture for violations of Section 333 of the Act was imposed in response to the unauthorized transmission of “chanting and heavy breathing” on frequencies licensed to the Fire District of Melville, New York.²² As set forth in *Buckley*, the Commission found that he “apparently willfully violated Section 333 of the Act by maliciously interfering with licensed communications of the Melville Fire District.”²³

8. Here, Mr. Peralta admits to having made, on nine different occasions (as summarized in Exhibit A), unauthorized transmissions on frequencies licensed to the NYPD, an entity charged with the safety of the nation’s most populous city.²⁴ Given the magnitude of the NYPD’s public safety mission, we find that, even if Mr. Peralta did not actually talk over or interrupt officers attempting to communicate with radio dispatchers, his admitted conduct was nevertheless disruptive to officer-dispatcher communications and therefore apparently violated Section 333 of the Act.²⁵ Following the reasoning of *Buckley*, we therefore find that each of Mr. Peralta’s unauthorized transmissions on the NYPD’s radio system not only precluded the NYPD’s exclusive authorized use during the times of those transmissions, but also had the effect of diverting the attention of NYPD radio dispatchers, which, as a result, disrupted dispatchers’ ability to communicate with NYPD officers. Accordingly, we find that each of Mr. Peralta’s unauthorized transmissions on the NYPD’s radio system was both willful and malicious interference with radio communications, and therefore apparently violated Section 333 of the Act.

C. Mr. Peralta Apparently Violated Section 325(a) of the Act by Transmitting False Distress Signals.

9. We find that Mr. Peralta apparently willfully and repeatedly violated Section 325(a) of the Act. Section 325(a) of the Act states that “[n]o person within the jurisdiction of the United States shall knowingly utter or transmit, or cause to be uttered or transmitted, any false or fraudulent signal of distress, or communication relating thereto.”²⁶ In his written statement to the NYPD, Mr. Peralta admitted to making three transmissions whose contents included a “false or fraudulent signal of distress.” Specifically, Mr. Peralta admitted to having transmitted a bomb threat on June 27, 2016, on a frequency licensed to the NYPD, and he also admitted to having transmitted on August 20 and August 26, 2016, 10-13 and 10-85 codes, respectively, both of which indicate that an NYPD officer is in need of assistance. As stated in the NYPD Report, Mr. Peralta transmitted the false distress calls for the purpose of “ensuring maximum attention from the NYPD.”²⁷ Further, on at least one occasion, Mr. Peralta apparently made a

²¹ See *Humphreys*, 31 FCC Rcd at 6123, para. 1; *Buckley*, 29 FCC Rcd at 7586, 7589, paras. 1, 10 (finding “Mr. Buckley intentionally and maliciously interfered with frequencies used by [the Melville Fire District of New York]” where unauthorized transmissions on the fire department’s frequencies disrupted dispatcher-firefighter communications).

²² *Buckley*, 29 FCC Rcd at 7586, paras. 3 - 4.

²³ *Id.* at 7589, para. 10.

²⁴ See U.S. Census Bureau, United States Summary: 2010, Population and Housing Unit Counts, 140, Table 37 (Sept. 2012), at <https://www.census.gov/prod/cen2010/cph-2-1.pdf>.

²⁵ In this regard, we observe, in particular, that the transmission of a 10-13 code not only signals an officer in distress, but also requires that other officers using the channel cease non-priority communications to keep the channel free for use by the officer in distress. See, note 5, *supra*.

²⁶ 47 U.S.C. § 325(a). See, e.g., *Daniel Delise, Astoria, New York*, Forfeiture Order, DA 16-1338 (EB Dec. 5, 2016), 2016 WL 7107201; *John J. Emil, Baltimore, Michigan*, Order, 9 FCC Rcd 1891 (Field Ops. Bur. 1994).

²⁷ NYPD Report at 2.

false distress call in order to distract officers while Mr. Peralta's accomplices "broke into [a] federal law enforcement car."²⁸ The underlying purposes for the false distress calls demonstrate that Mr. Peralta's transmissions were both false and knowingly made to elicit a desired response from the NYPD. Accordingly, based on the preponderance of the evidence before us, we find that the false distress calls constitute apparent violations of Section 325(a) of the Act.

D. Proposed Forfeiture

10. Section 503(b) of the Act authorizes the Commission to impose a forfeiture against any individual or 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."²⁹ Here, Section 503(b)(2)(D) of the Act authorizes the Commission to assess a forfeiture against Mr. Peralta of up to \$19,246 for each violation or each day of a continuing violation, up to a statutory maximum of \$144,344 for a single act or failure to act.³⁰ 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."³¹ 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.³² 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.³³

²⁸ Peralta Statement at 2.

²⁹ 47 U.S.C. § 503(b).

³⁰ See 47 U.S.C. § 503(b)(2)(D); 47 CFR §§ 1.80(b)(7), (9). These amounts reflect inflation adjustments to the forfeitures specified in Section 503(b)(2)(D) (\$10,000 per violation or per day of a continuing violation and \$75,000 per any single act or failure to act). The Federal Civil Penalties Inflation Adjustment Act of 1990, Pub. L. No. 101-410, 104 Stat. 890, as amended by the Debt Collection Improvement Act of 1996, Pub. L. No. 104-134, Sec. 31001, 110 Stat. 1321 (DCIA), as further amended by the Federal Reports Elimination Act of 1998, Pub. L. No. 105-362, Sec. 1301, 112 Stat. 3280, and as further amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, Sec. 701, Pub. L. No. 114-74, 129 Stat. 599 (2015 Inflation Adjustment Act) (collectively, Federal Civil Penalties Inflation Adjustment Act, as amended), codified as amended at 28 U.S.C. § 2461 note, required the Commission to adjust its penalties for inflation and publish interim final rules with the initial penalty adjustment amounts by July 1, 2016 and new penalty levels must take effect no later than August 1, 2016. See 28 U.S.C. § 2461 note. The Commission published those interim final rules on June 30, 2016. See *Amendment of Section 1.80(b) of the Commission's Rules, Adjustment of Civil Monetary Penalties to Reflect Inflation*, Order, 31 FCC Rcd 6793 (EB 2016); see also *Adjustment of Civil Monetary Penalties to Reflect Inflation*, 81 Fed. Reg. 42554 (June 30, 2016) (setting August 1, 2016, as the effective date for the increases). The Federal Civil Penalties Inflation Adjustment Act of 1990, as amended, also requires agencies, starting in 2017, to adjust annually the civil monetary penalties covered thereunder, and to publish each such annual adjustment by January 15 of each year. 28 U.S.C. § 2461 note, citing the Federal Civil Penalties Inflation Adjustment Act of 1990 as amended, § 4(a). See also Office of Mgmt. & Budget, Exec. Office of the President, Memorandum for the Heads of Executive Departments and Agencies re Implementation of the 2017 annual adjustment pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, M-17-11, Dec. 16, 2016 at 1. The Bureau released the order making the 2017 annual adjustment on December 30, 2016. See *Amendment of Section 1.80(b) of the Commission's Rules, Adjustment of Civil Monetary Penalties to Reflect Inflation*, Order, DA 16-1453 (EB 2016), 2016 WL 7492481; see also *Adjustment of Civil Monetary Penalties to Reflect Inflation*, 82 Fed. Reg. 8170 (Jan. 24, 2017) (setting January 24, 2017, as the effective date for the increases). The 2015 Inflation Adjustment Act provides that the new penalty levels shall apply to penalties assessed after the effective date of the increase, "including [penalties] whose associated violation predated such increase." See 28 U.S.C. § 2461 note, citing the Federal Civil Penalties Inflation Adjustment Act, as amended, § 6.

³¹ 47 U.S.C. § 503(b)(2)(E).

³² 47 CFR § 1.80(b)(8), note to paragraph (b)(8).

³³ *Id.*

11. Section 1.80(b) of the Commission's rules sets the following base forfeiture amounts for the apparent violations at issue here: \$10,000 for each violation or each day of a continuing violation relating to the construction or operation of a station without an instrument of authorization for the service in violation of Section 301 of the Act; \$7,000 for each violation or each day of a continuing violation relating to causing interference in violation of Section 333 of the Act; and \$8,000 for each violation or each day of a continuing violation relating to transmitting false or fraudulent distress signals in violation of Section 325(a) of the Act.³⁴ We have discretion, however, to depart from these guidelines, taking into account the particular facts of each individual case.³⁵ Here, the facts require us to propose a substantial penalty. As discussed above, we find that Mr. Peralta has admitted to nine separate apparent violations of Section 301 of the Act, nine separate apparent violations of Section 333 of the Act, and three separate apparent violations of Section 325(a) of the Act. We note that four of Mr. Peralta's unauthorized transmissions took place on a single day, July 30, 2016, but we nevertheless treat each unauthorized transmission as a separate apparent violation for purposes of calculating the proposed base forfeiture amount. As shown in Exhibit A, Mr. Peralta's unauthorized transmissions on July 30, 2016, were made on several different frequencies licensed to the NYPD. Mr. Peralta's decision to operate on different frequencies on July 30, 2016, meant that his unauthorized transmissions were received by different NYPD precincts.³⁶ Accordingly, and consistent with Commission precedent, we treat each unauthorized transmission on July 30, 2016, as a separate apparent violation for purposes of calculating the proposed forfeiture amount.³⁷ Application of the base forfeiture amounts described above and detailed in Exhibit A yields an aggregate base forfeiture of \$177,000.³⁸

12. Given the totality of the circumstances, we conclude that significant upward adjustments of the proposed base forfeiture are warranted.³⁹ In assessing the appropriate monetary penalty for the misconduct at issue, we must 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

³⁴ 47 CFR § 1.80(b).

³⁵ *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, 17098–99, para. 22 (1997) (noting that “[a]lthough we have adopted the base forfeiture amounts as guidelines to provide a measure of predictability to the forfeiture process, we retain our discretion to depart from the guidelines and issue forfeitures on a case-by-case basis, under our general forfeiture authority contained in Section 503 of the Act”) (*Forfeiture Policy Statement*), *recons. denied*, Memorandum Opinion and Order, 15 FCC Rcd 303 (1999).

³⁶ See note 17, *supra*.

³⁷ See, e.g., *Viacom Inc., ESPN Inc.*, Forfeiture Order, 30 FCC Rcd 797, 806-07, para. 24 (2015) (treating each transmission of false EAS tones contained in a movie trailer as a separate violation rather than a single, ongoing violation); see also *Radio License Holding XI, LLC*, Forfeiture Order, 29 FCC Rcd 1623, 1628, para. 12 (2014) (where Commission found that eleven deficient broadcasts that failed to include required sponsorship disclosures constituted eleven discrete violations, not a single violation); *Net One Int'l Inc.*, Notice of Apparent Liability for Forfeiture, 29 FCC Rcd 9046, 9052, paras. 9–10 (2014), *forfeiture ordered*, Forfeiture Order, 31 FCC Rcd 2367 (2016) (applying base forfeiture to each of 20 cramming violations) (citing *Consumer Telcom, Inc.*, Notice of Apparent Liability for Forfeiture, 28 FCC Rcd 17196, 17208 n.79 (2013)); *Scott Malcolm DSM Supply, LLC, Somaticare, LLC*, Notice of Apparent Liability for Forfeiture, 29 FCC Rcd 2476, 2484, para. 20 (2014), *forfeiture ordered*, Forfeiture Order, 31 FCC Rcd 1652 (2016) (finding that each junk fax violation constitutes a separate and distinct rule violation).

³⁸ See Exhibit A.

³⁹ See *Midessa Television Limited Partnership*, Notice of Apparent Liability for Forfeiture, 29 FCC Rcd 13247, 13250-51, para. 11 (2014) (forfeiture paid) (proposing a significant upward adjustment for operating three Broadcast Auxiliary Services (BAS) stations without authorization and six BAS stations at variance from authorizations for at least four years); *Union Oil Company of California*, Notice of Apparent Liability for Forfeiture, 27 FCC Rcd 13806, 13811, para. 10 (2012) (significant upward adjustment for unlicensed operation of a Private Land Mobile Radio Service station for six years and an Aeronautical and Fixed Advisory station for nearly eight years).

the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.⁴⁰ As explained above and summarized in Exhibit A, Mr. Peralta made nine unauthorized and interfering transmissions on the NYPD's radio system. This conduct was particularly troubling because, by disrupting NYPD officers' ability to effectively communicate with radio dispatchers, each of Mr. Peralta's transmissions created a scenario in which a dispatcher might not be able to hear and respond to an emergency transmission from an NYPD officer. Accordingly, we find these repeated actions to be particularly egregious, warranting a 100 percent upward adjustment of the base forfeiture amount for each apparent violation referenced herein.⁴¹

13. In light of the unique circumstances of this case, we find that further upward adjustments are warranted. Seven of Mr. Peralta's nine transmissions included messages that had the potential to cause substantial harm, whether through false bomb threats, threats to harm NYPD officers, false distress calls, and false reports of gun-related crimes.⁴² We therefore apply a further 100 percent upward adjustment for each of the apparent violations referenced herein associated with those seven transmissions. With respect to Mr. Peralta's remaining two transmissions,⁴³ we note that those transmissions were part of an apparent effort to distract multiple NYPD precincts at approximately the same time, thereby compounding the harmful impact on the NYPD's radio system by forcing multiple NYPD precincts to respond to unauthorized and interfering transmissions at roughly the same time.⁴⁴ We therefore propose a further 100 percent upward adjustment for the apparent violations associated with those two transmissions. In total, the upward adjustments we propose here triple the base forfeiture for each apparent violation at issue.

14. As stated above, we find that Mr. Peralta apparently committed nine separate violations of Section 301 of the Act, nine violations of Section 333 of the Act, and three violations of Section 325(a) of the Act.⁴⁵ Consistent with the *Forfeiture Policy Statement*, Section 1.80 of the Commission's rules, and the statutory factors discussed above, we conclude that proposed forfeiture amounts of \$30,000 for each Section 301 violation, \$21,000 for each Section 333 violation, and \$24,000 for each Section 325(a) violation are warranted, resulting in an aggregate proposed forfeiture of \$531,000. However, because Section 503(b)(2)(D) of the Act imposes a maximum penalty of \$19,246 for each violation,⁴⁶ we must reduce the total proposed forfeiture amount to \$404,166, the maximum amount allowed.

15. In applying the applicable statutory factors, we also consider whether there is any basis for a downward adjustment of the proposed forfeiture. Because of the nature and frequency of the violations of Section 301 and 333, coupled with the harm caused, or potentially caused, by the apparent violations of Section 325(a), we find no basis for a downward adjustment of the proposed forfeiture. Therefore, after applying the *Forfeiture Policy Statement*, Section 1.80 of the Commission's rules, and the statutory factors, we propose a total forfeiture of \$404,166, for which Mr. Peralta is apparently liable.

⁴⁰ 47 U.S.C. § 503(b)(2)(E).

⁴¹ See *Jason Humphreys*, Notice of Apparent Liability, 29 FCC Rcd 5476, 5480, para. 13 (2014), *forfeiture ordered*, Forfeiture Order, 31 FCC Rcd 6123 (2016) (proposing significant increase in proposed forfeiture amount for particularly egregious jammer operation).

⁴² More specifically, the seven transmissions subject to this second upward adjustment are as follows: (1) April 15, 2016 at 01:33:17, (2) June 27, 2016 at 05:23:38, (3) July 30, 2017 at 17:22:00, (4) July 30, 2016 at 17:43:38, (5) August 20, 2016 at 19:22:38, (6) August 21, 2016 at 22:36:37, and (7) August 26, 2016 at 17:25:51. See Exhibit A.

⁴³ These transmissions were made at 17:27:14 and 17:29:30 on July 30, 2016. *Id.*

⁴⁴ Specifically, the 17:27:14 transmission was made on a channel used by the 110th and 115th precincts, while the 17:29:30 transmission was made on a channel used by the 108th and 114th precincts. *Id.*

⁴⁵ 47 U.S.C. §§ 301, 333; 325(a).

⁴⁶ See paragraph 10, *supra*.

IV. CONCLUSION

16. We have determined that Mr. Peralta apparently willfully and repeatedly violated Sections 301, 325(a) and 333 of the Act. As such, Mr. Peralta is apparently liable for a forfeiture of \$404,166.

V. ORDERING CLAUSES

17. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Act⁴⁷ and Section 1.80 of the Commission's rules,⁴⁸ Jay Peralta is hereby **NOTIFIED** of his **APPARENT LIABILITY FOR A FORFEITURE** in the amount of Four Hundred Four Thousand, One Hundred Sixty-Six Dollars (\$404,166) for willful and repeated violations of Sections 301, 325(a) and 333 of the Act.⁴⁹

18. **IT IS FURTHER ORDERED** that, pursuant to Section 1.80 of the Commission's rules,⁵⁰ within thirty (30) calendar days of the release date of this Notice of Apparent Liability for Forfeiture, Jay Peralta **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.

19. Payment of the proposed forfeiture must be made by check or similar instrument, wire transfer, or credit card, and must include the NAL/Account Number and FRN referenced above. Jay Peralta shall send electronic notification of payment to NER-Response@fcc.gov on the date said payment is made. An FCC Form 159 (Remittance Advice) must be submitted with payment unless payment is made online at the Commission's Fee Filer website.⁵¹ When completing the FCC Form 159, enter the Account Number in block number 23A (call sign/other ID) and enter the letters "FORF" in block number 24A (payment type code). Below are additional instructions that should be followed based on the form of payment selected:⁵²

- Payment by check or money order must be made payable to the order of the Federal Communications Commission. Such payments (along with the completed Form 159) must be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.
- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. To complete the wire transfer and ensure appropriate crediting of the wired funds, a completed Form 159 must be faxed to U.S. Bank at (314) 418-4232 on the same business day the wire transfer is initiated.
- Payment by credit card must be made by providing the required credit card information on FCC Form 159 and signing and dating the Form 159 to authorize the credit card payment. The completed Form 159 must then be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank –

⁴⁷ 47 U.S.C. § 503(b).

⁴⁸ 47 CFR § 1.80.

⁴⁹ 47 U.S.C. §§ 301, 325(a), and 333.

⁵⁰ 47 CFR § 1.80.

⁵¹ Payment may be made online at the Commission's Fee Filer website: <https://www.fcc.gov/encyclopedia/fee-filer>. Online payments do not require payors to submit FCC Form 159. Alternatively, payment may be made using FCC Form 159; detailed instructions for completing the form may be obtained at: <http://www.fcc.gov/Forms/Form159/159.pdf>.

⁵² Questions regarding payment procedures should be directed to the Financial Operations Group Help Desk by phone at 1-877-480-3201, or by e mail at ARINQUIRIES@fcc.gov.

Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.

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 20554.⁵³ 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.

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.⁵⁴ 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 – Field Counsel, and must include the NAL/Account Number referenced in the caption. The statement must also be e-mailed to NER-Response@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 Jay Peralta at his address of record.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

⁵³ See 47 CFR § 1.1914.

⁵⁴ 47 CFR §§ 1.16, 1.80(f)(3).

Exhibit A
Unauthorized Transmissions Acknowledged by Mr. Peralta⁵⁵

Date	Time	NYPD Zone	NYPD Precincts	Transmission	Frequency	NYPD Call Sign	Apparent Violations of the Act	Calculated Forfeiture ⁵⁶	Proposed Forfeiture ⁵⁷
04/15/2016	01:33:17	2	6 & 9	“Off duty MOS gun run at Walgreens 14th Street, 2nd Floor	479.4375 MHz	WIF575	§ 301 § 333	\$30,000 \$21,000	\$19,246 \$19,246
06/27/2016	05:23:38	4	14,17 & 18	“Bomb threat to Times Square Walgreens, 10th floor.”	479.5875 MHz	WIF542	§ 301 § 325(a) § 333	\$30,000 \$24,000 \$21,000	\$19,246 \$19,246 \$19,246
07/30/2016	17:22:00	34	110 & 115	“There’s a gun run. Shut the f**k up I’m talking to the Lieutenant.” Music begins at 17:24:51	479.8125 MHz	WIF573	§ 301 § 333	\$30,000 \$21,000	\$19,246 \$19,246
07/30/2016	17:27:14	34	110 & 115	“If I turn in this radio how (much) can I get?”	479.8125 MHz	WIF573	§ 301 § 333	\$30,000 \$21,000	\$19,246 \$19,246
07/30/2016	17:43:38	4	14, 17 & 18	“Threat to South Duty Captain.”	479.5875 MHz	WIF542	§ 301 § 333	\$30,000 \$21,000	\$19,246 \$19,246
07/30/2016	17:29:30	32	108 & 114	“I found this radio, will someone give me cash?”	479.6125 MHz	WIF577	§ 301 § 333	\$30,000 \$21,000	\$19,246 \$19,246

⁵⁵ As discussed in paragraph 4, *supra*, the NYPD presented Mr. Peralta with a list of unauthorized transmissions made on frequencies licensed to the NYPD, nine of which Mr. Peralta initialed as an acknowledgement that he made the unauthorized transmissions. The data in the first five columns of the table above are taken directly from the NYPD-generated list that Mr. Peralta initialed. *See* Peralta Statement at 4 – 6. The remaining data are derived from NYPD and Commission records relating to the use of specific Commission-issued licenses within specific geographic zones defined by the NYPD.

⁵⁶ The values in this column represent the aggregate proposed forfeiture for each apparent violation of the Act *before* giving effect the current statutory limit of \$19,246 for each violation or each day of a continuing violation. *See* note 30, *supra*. Specifically, for each apparent violation of the Act, the value in the Calculated Forfeiture column represents (a) the applicable proposed base forfeiture set forth in paragraph 11, *plus* (b) the proposed upward adjustments set forth in paragraphs 12-13. *See* paras. 11 – 13, *supra*.

⁵⁷ Because the values in the Calculated Forfeiture column exceed the maximum forfeiture permitted under the Act for a single violation, the Proposed Forfeiture values have been reduced to that value, \$19,246 per violation. *See* para. 14, *supra*.

Date	Time	NYPD Zone	NYPD Precincts	Transmission	Frequency	NYPD Call Sign	Apparent Violations of the Act	Calculated Forfeiture ⁵⁶	Proposed Forfeiture ⁵⁷
08/20/2016	19:22:38	6	20, 22 & 24	“10-85 & South Captain, gonna put a bullet in your head.”	479.3125 MHz	WIF539	§ 301 § 325(a) § 333	\$30,000 \$24,000 \$21,000	\$19,246 \$19,246 \$19,246
08/21/2016	22:36:37	6	20, 22 & 24	“Does anyone want this radio?” “South Captain raised again “I’m gonna put a bullet in your head, I hope you know that . . . Oh wait, wrong station.”	479.3125 MHz	WIF539	§ 301 § 333	\$30,000 \$21,000	\$19,246 \$19,246
08/26/2016	17:25:51	34	110 & 115	“10-13, Central 10-13.” Tones.	479.8125 MHz	WIF573	§ 301 § 325(a) § 333	\$30,000 \$24,000 \$21,000	\$19,246 \$19,246 \$19,246
Total Proposed Forfeiture									\$404,166

**STATEMENT OF
CHAIRMAN AJIT PAI**

Re: *Jay Peralta, Corona, New York*, File No. EB-FIELDNER-16-00022343.

Today, the FCC makes it abundantly clear that it will not tolerate unauthorized and illegal use of the radio spectrum. This may not be a typical pirate radio case in which an unauthorized operator inflicts damage on a radio broadcaster that is operating with a valid FCC license, but it does involve unauthorized interference to critical public safety communications systems.

Jay Peralta deliberately disregarded the Commission's rules and the safety and security of New York City Police Department (NYPD) officers and the general public when he operated a radio on frequencies licensed to the NYPD without FCC authorization. Mr. Peralta's nine unauthorized and interfering transmissions involved false bomb threats, false claims of criminal activities involving firearms, false distress calls from purported NYPD officers, and threats against NYPD officers. These transmissions were malicious and egregious actions that could have caused substantial and widespread harm.

For as long as the FCC has existed, the agency has had the important mission of preventing radio interference. And within the realm of public safety, the FCC has no higher purpose than promoting secure and reliable public safety and emergency response communications. The Commission must continue to discharge these critical duties—and vigorous prosecution of the fight against unauthorized operators is an important way to do so.

I am grateful to my fellow Commissioners for agreeing to act swiftly and strongly in this serious matter.