

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

In the Matter of
Ocean Adrian Hinson,
Surry County, North Carolina
File No.: EB-FIELDSCR-17-00025734
NAL/Acct. No.: 201832020001
FRN: 0027726454

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: October 10, 2018

Released: October 11, 2018

By the Commission:

I. INTRODUCTION

1. We propose a forfeiture in the amount of \$39,278 against Ocean Adrian Hinson for apparently operating, without authorization from the Commission, a radio on a frequency licensed to the County of Surry, North Carolina (Surry County) and used by the Surry County Communications Center to communicate with local first responders. More particularly, Mr. Hinson admitted impersonating a unit of the Westfield Volunteer Fire Department (Westfield VFD) in radio communications with the county's emergency dispatchers. Through his actions, Mr. Hinson has demonstrated an apparent deliberate disregard not only for the Commission's authority and rules, but also for the safety of first responders and the public that they are called to serve and protect. Commission action in this context is therefore essential to safeguard authorized operations on spectrum licensed for public safety uses, and, accordingly, a substantial penalty appears warranted.

II. BACKGROUND

2. According to an investigative file provided to the Commission by the Criminal Investigative Division of the Surry County Sheriff's Office (Sheriff's Office),1 on October 17, 2017, the Surry County Communications Center transmitted a message over its public safety radio system2 requesting that a unit of the Westfield VFD respond to a triggered residential fire alarm.3 Several seconds later, an individual identifying himself as Westfield VFD Unit 7331 responded to the Surry County Communications Center by radio and stated that he was en route to the scene of the alarm.4 Approximately four minutes later, the same individual, still identifying himself as Westfield VFD Unit 7331, contacted the dispatcher by radio and cancelled the call, meaning that no other unit of Westfield

1 Surry County Sheriff's Office, Criminal Investigation Division, Investigative File, Case No. 17110222 (on file in EB-FIELDSCR-17-00025734) (Investigative File). The Investigative File is comprised of multiple individual documents, some of which are duplicative in part. For ease of reference, we have stamped the Investigative File with consecutive page numbers (SCSCID0001 - SCSCID0033) and cite to those pages rather than to the individual documents comprising the Investigative File.

2 Surry County holds numerous licenses issued by the Commission. Today's action by the Commission relates to Mr. Hinson's apparent unauthorized transmissions on a frequency licensed for the public safety uses under the call sign KSL904.

3 Investigative File, SCSCID0013 - SCSCID0014.

4 Id.

VFD needed to travel to the scene of the alarm.⁵ According to the Investigative File, Westfield VFD Unit 7331 does not exist; thus, no units from Westfield VFD ever responded to the October 17, 2017, dispatch from the Surry County Communications Center.⁶ Local authorities later determined that Mr. Hinson's actions did not cause direct harm to life or property, as there was not a fire at the residence in question.⁷

3. During the Sheriff's Office's investigation, Stephanie Conner, the director of the Surry County Communications Center, told investigators that Mr. Hinson might be involved in the incident.⁸ Investigators contacted Mr. Hinson, who agreed to be interviewed about the incident. On November 21, 2017, Mr. Hinson appeared at the Sheriff's Office, where he initially denied any involvement in making unauthorized transmissions on the county's public safety radio system.⁹ The following day, however, Mr. Hinson contacted another Sheriff's Office investigator, who urged Mr. Hinson to return for a further interview.¹⁰ That evening, Mr. Hinson returned to Sheriff's Office and admitted to having made two unauthorized transmissions on October 17, 2017.¹¹ During the interview, Mr. Hinson stated that he made the transmissions using a mobile radio located in his personal vehicle. Mr. Hinson admitted that in his first transmission, he identified himself as Westfield VFD Unit 7331 and stated that he was en route in response to a request from the county emergency dispatcher to investigate an alert sent by a residential fire alarm system.¹² Mr. Hinson also admitted that, a short while later, he made a second transmission that had cancelled Westfield VFD's response to the alert.¹³ As a result, no unit from the Westfield VFD responded to investigate whether there was, in fact, a fire at the location in question.¹⁴ Mr. Hinson also confirmed that he was not a member of the Westfield VFD on October 17, 2017.¹⁵ At the conclusion of the interview, Mr. Hinson was asked to review the interviewer's notes and to sign each page to acknowledge its accuracy.¹⁶

4. On December 1, 2017, a detective from Sheriff's Office obtained a warrant to arrest Mr. Hinson on the charge of interfering with emergency communications, in violation of North Carolina law. Later that day, Mr. Hinson turned himself in at the Sheriff's Office and was released on a secured bond pending trial.¹⁷ Mr. Hinson currently awaits trial in state court.

III. DISCUSSION

A. Mr. Hinson Apparently Violated Section 301 of the Communications Act by Making Unauthorized Transmissions on Spectrum Licensed to Surry County.

5. We find that Mr. Hinson, 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

⁵ Investigative File, SCSCID0012 - SCSCID0014.

⁶ Investigative File, SCSCID0012.

⁷ See Email from Det. Scott Hudson (Apr. 26, 2018) (on file in EB-FIELDSCR-17-00025734).

⁸ *Id.*

⁹ Investigative File, SCSCID0007.

¹⁰ *Id.*

¹¹ Investigative File, SCSCID0007, SCSCID0031.

¹² *Id.*

¹³ *Id.*

¹⁴ Investigative File, SCSCID0007, SCSCID0012.

¹⁵ Investigative File, SCSCID0031.

¹⁶ Investigative File, SCSCID0031 - SCSCID0033.

¹⁷ Investigative File, SCSCID0026.

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.¹⁸ 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.¹⁹

6. Based on the record before us, Mr. Hinson, who is not a Commission licensee, has apparently willfully and repeatedly violated Section 301 of the Act. Specifically, by his own admission, on October 17, 2017, Mr. Hinson made two separate radio transmissions on a frequency for which a license from the Commission was required.²⁰ Mr. Hinson did not have a license to transmit on that frequency; rather Surry County has a license to transmit on this frequency under call sign KSL904 within the county's borders.²¹

B. Proposed Forfeiture

7. 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.”²² Here, Section 503(b)(2)(D) of the Act authorizes the Commission to assess a forfeiture against Mr. Hinson of up to \$19,639 for each violation or each day of a continuing violation, up to a statutory maximum of \$147,290 for a single act or failure to act.²³ In exercising our forfeiture authority, we must consider the “nature, circumstances, extent, and

¹⁸ 47 U.S.C. § 301.

¹⁹ 47 U.S.C. § 503(b). 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. 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 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). The term “repeated” means the commission or omission of such act more than once or for more than one day.

¹⁹ *See* 47 U.S.C. § 312(f)(2); *Callais Cablevision, Inc.*, Notice of Apparent Liability for Monetary Forfeiture, 16 FCC Rcd 1359, para. 9 (2001), *forfeiture ordered*, Forfeiture Order, 17 FCC Rcd 22626 (2002).

²⁰ *See, e.g., Jay Peralta, Corona, New York*, Notice of Apparent Liability for Forfeiture, 32 FCC Rcd 3246, 3247 - 48, paras. 5 - 6 (2017), *forfeiture ordered*, Forfeiture Order, 32 FCC Rcd 7993 (2017) (finding an apparent violation of Section 301 of the Act where an individual operated, without a license, on frequencies licensed to the New York City Police Department); *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).

²¹ *See supra* note 2.

²² 47 U.S.C. § 503(b).

²³ *See* 47 U.S.C. § 503(b)(2)(D); 47 CFR §§ 1.80(b)(7), (9); *see also Peralta*, 32 FCC Rcd at 3250, para. 10 & n.30 (2017) (discussing inflation adjustments to the forfeitures specified in Section 503(b)(2)(D)); *Amendment of Section*

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.”²⁴ 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.²⁵ 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.²⁶

8. Section 1.80(b) of the Commission’s rules sets a base forfeiture of \$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.²⁷ We find that Mr. Hinson has admitted to actions that constitute two apparent willful violations of Section 301 of the Act. Although Mr. Hinson made both transmissions on Surry County’s public safety radio system on the same day, October 17, 2017, we treat each individual transmission as a separate act for purposes of calculating the proposed base forfeiture amount.²⁸ Accordingly, the application of the base forfeiture amount described above yields an aggregate base forfeiture of \$20,000 (comprised of \$10,000 per violation for two apparent violations of Section 301 of the Act).

9. We have discretion, however, to depart from this baseline, taking into account the particular facts of each individual case.²⁹ 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 the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.³⁰ Here, the facts require us to propose a substantial penalty to the statutory maximum for two reasons.

10. First, Mr. Hinson admitted to making unauthorized transmissions on Surry County’s public safety radio system. Mr. Hinson’s admitted conduct was particularly troubling because, by disrupting the Westfield VFD members’ ability to effectively communicate with radio dispatchers, Mr. Hinson’s transmissions created a scenario in which a dispatcher might not be able to hear or properly respond to an emergency transmission from a Westfield VFD member. Further, by triggering a criminal investigation of his admitted conduct, Mr. Hinson also diverted the limited resources of the Surry County Communications Center, whose staff were subsequently interviewed by, and provided written statements to, investigators from the Sheriff’s Office. Accordingly, we find that Mr. Hinson’s repeated

1.80(b) of the Commission’s Rules Adjustment of Civil Monetary Penalties to Reflect Inflation, Order, 33 FCC Rcd 46 (EB 2018).

²⁴ 47 U.S.C. § 503(b)(2)(E).

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

²⁶ *Id.*

²⁷ 47 CFR § 1.80(b).

²⁸ *See Peralta*, 32 FCC Rcd at 3251, para. 11 (treating multiple transmissions on the same day as separate acts for purposes of calculating a proposed forfeiture).

²⁹ *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).

³⁰ 47 U.S.C. § 503(b)(2)(E).

transmissions were particularly egregious, thereby warranting an upward adjustment of the base forfeiture amount for each apparent violation referenced herein to the statutory maximum.³¹

11. Second, by creating a false impression among dispatchers in the Surry County Communications Center and members of the Westfield VFD that someone was en route to investigate a residential fire alarm, Mr. Hinson's transmissions had the potential to cause substantial harm to life and property had there been an actual fire.³² We would therefore apply an independent upward adjustment for each of the apparent violations referenced herein to the statutory maximum.

12. In applying the applicable statutory factors, we also consider whether there is any basis for a downward adjustment of the proposed forfeiture. Here we find none. 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 \$39,278, for which Mr. Hinson is apparently liable.

IV. CONCLUSION

13. We have determined that Mr. Hinson apparently willfully and repeatedly violated Section 301 of the Act. As such, Mr. Hinson is apparently liable for a forfeiture of \$39,278.

V. ORDERING CLAUSES

14. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Act³³ and Section 1.80 of the Commission's rules,³⁴ Ocean Adrian Hinson is hereby **NOTIFIED** of his **APPARENT LIABILITY FOR A FORFEITURE** in the amount of Thirty-Nine Thousand, Two Hundred Seventy-Eight Dollars (\$39,278) for willful and repeated violations of Section 301 of the Act.³⁵

15. **IT IS FURTHER ORDERED** that, pursuant to Section 1.80 of the Commission's rules,³⁶ within thirty (30) calendar days of the release date of this Notice of Apparent Liability for Forfeiture, Ocean Adrian Hinson **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 18, below.

16. 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. Ocean Adrian Hinson shall send electronic notification of payment to field@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.³⁷ 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

³¹ See *Peralta*, 32 FCC Rcd at 3251 - 52, para 12 (proposing an upward adjustment based on the egregiousness of disrupting communications between dispatchers and police officers) (citing *Jason Humphreys*, Notice of Apparent Liability, 29 FCC Rcd 5476, 5480, para. 13 (2014), *forfeiture ordered*, Forfeiture Order, 31 FCC Rcd 6123 (2016)); see *supra* note 23.

³² See *Peralta*, 32 FCC Rcd at 3252, para. 13 (proposing a separate upward adjustment based on the potential of unauthorized transmissions to cause substantial harm).

³³ 47 U.S.C. § 503(b).

³⁴ 47 CFR § 1.80.

³⁵ 47 U.S.C. § 301.

³⁶ 47 CFR § 1.80.

³⁷ 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>.

(payment type code). Below are additional instructions that should be followed based on the form of payment selected:³⁸

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

17. 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 20554.³⁹ 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.

18. 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.⁴⁰ 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 field@fcc.gov.

19. 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.

³⁸ 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.

³⁹ See 47 CFR § 1.1914.

⁴⁰ 47 CFR §§ 1.16, 1.80(f)(3).

20. **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 Ocean Adrian Hinson at his address of record.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary