

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

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

FORFEITURE ORDER

Adopted: August 6, 2019

Released: August 7, 2019

By the Commission:

I. INTRODUCTION

1. The Commission licenses dedicated spectrum to public safety entities to ensure that first responders can efficiently and accurately communicate during emergencies. Unauthorized operation on public safety spectrum carries the risk of substantial harm, both to the first responders themselves and to the public that they serve. Accordingly, we impose the maximum fine permissible under statute against Ocean Adrian Hinson for his unauthorized operation on the public safety frequency used by the Westfield Volunteer Fire Department in Surry County, North Carolina.

2. To be specific, we impose a penalty of \$39,278 against Mr. Hinson¹ for twice 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, including the Westfield Volunteer Fire Department.² Through his actions, Mr. Hinson has demonstrated 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. Although Mr. Hinson has requested a reduction or cancellation of the forfeiture, after reviewing his request and the undisputed facts set forth in the Notice, we find no reason to cancel, withdraw, or reduce the proposed penalty.

II. BACKGROUND

3. Section 301 of the Communications Act of 1934, as amended (Act) states that no person shall use or operate any communications transmission equipment within the United States without a license granted by the Commission.³ On October 17, 2017, Mr. Hinson made two separate unauthorized transmissions on spectrum licensed to Surry County in response to a radio call by a dispatcher at the

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 See Ocean Adrian Hinson, Surry County, North Carolina, Notice of Apparent Liability for Forfeiture, 33 FCC Rcd 9977 (2018) (Notice). The Notice includes a more complete discussion of the facts and history of this case and is incorporated herein by reference.

³ 47 U.S.C. § 301 (“No person shall use or operate any apparatus for the transmission of energy or communications or signals by radio . . . except under an in accordance with this Act and with a license in that behalf granted under the provisions of this Act.”).

Surry County Communications Center.⁴ After the dispatcher requested that the Westfield Volunteer Fire Department respond to a triggered residential fire alarm, Mr. Hinson used a radio first to transmit a response in which he impersonated a Westfield Volunteer Fire Department unit.⁵ Approximately four minutes later, Mr. Hinson made a second radio transmission in which he cancelled the call, communicating that no other unit of the Westfield Volunteer Fire Department needed to respond to the triggered residential fire alarm. Fortunately, there was no fire at the residence.

4. On October 11, 2018, the Commission issued the *Notice*, proposing a forfeiture in the amount of \$39,278 against Mr. Hinson for his apparent willful and repeated unauthorized transmissions in violation of section 301 of the Act.⁶ On November 9, 2018, Mr. Hinson submitted a written response to the *Notice*.⁷ In his response, Mr. Hinson neither contested the Commission's findings of fact or law in the *Notice* that he twice violated section 301 of the Act by engaging in unauthorized operations on public safety frequencies, nor offered any explanation for his conduct.⁸ Instead, Mr. Hinson recited his financial condition and requested that we reduce or cancel the forfeiture in light of his limited financial means.⁹

III. DISCUSSION

5. The Commission proposed a forfeiture in this case in accordance with section 503(b) of the Act,¹⁰ section 1.80 of the Commission's rules,¹¹ and the Commission's *Forfeiture Policy Statement*.¹² When we assess forfeitures, section 503(b)(2)(E) of the Act requires that we 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 such other matters as justice may require."¹³ We have fully considered Mr. Hinson's NAL Response, which included only a request to reduce or cancel the proposed forfeiture, and do not find it persuasive; it neither disputes the facts or legal conclusions advanced in the NAL nor establishes his entitlement to a reduction of the forfeiture. We therefore affirm the \$39,278 forfeiture proposed in the *Notice*.

6. We find, consistent with the Commission's *Notice*, that Mr. Hinson willfully and repeatedly violated section 301 of the Act by making two transmissions on public safety frequencies for which he had no authority to operate. Mr. Hinson is not a Commission licensee and has admitted to local law enforcement that on October 17, 2017, he made two separate radio transmissions on a frequency for which a license from the Commission was required.¹⁴

⁴ *Notice*, 33 FCC Rcd at 9977-78, paras. 2-3.

⁵ *Id.*

⁶ 47 U.S.C. § 301; *Notice*, 33 FCC Rcd at 9978-79, paras. 5-6.

⁷ Ocean Adrian Hinson, Response to Notice of Apparent Liability for Forfeiture (Nov. 9, 2018) (on file in EB-FIELDSCR-17-00025734) (NAL Response).

⁸ *See generally* NAL Response.

⁹ *See id.*

¹⁰ 47 U.S.C. § 503(b).

¹¹ 47 CFR § 1.80.

¹² *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 (1997) (*Forfeiture Policy Statement*), *recons. denied*, Memorandum Opinion and Order, 15 FCC Rcd 303 (1999).

¹³ 47 U.S.C. § 503(b)(2)(E).

¹⁴ *See Notice*, 33 FCC Rcd at 9978-79, paras. 3 and 6.

7. We also find, consistent with the Commission's *Notice*, that an upward adjustment from the base forfeiture of \$10,000¹⁵ to the statutory maximum of \$19,639 for each of the two violations of section 301 of the Act is warranted due to Mr. Hinson's egregious conduct.¹⁶ Mr. Hinson's conduct was egregious because of (a) the disruption of Westfield Volunteer Fire Department members' ability to communicate effectively with emergency dispatchers and (b) the consumption of limited local resources through the criminal investigation prompted by his transmissions.¹⁷ Mr. Hinson's conduct also had the potential to cause substantial harm to life and property.¹⁸ Specifically, by impersonating a unit of the Westfield Volunteer Fire Department, Mr. Hinson created a false perception within the Surry County Communications Center that the Westfield Volunteer Fire Department was taking appropriate steps to investigate a residential fire alarm.

8. In the NAL Response, Mr. Hinson seeks a reduction or cancellation of the proposed forfeiture based on an asserted inability to pay.¹⁹ We decline to reduce the proposed forfeiture on that basis. A violator's "ability to pay" is only one of several factors the Commission must take into account when determining an appropriate forfeiture under section 503 of the Act and our forfeiture guidelines, together with "the nature, circumstances, extent, and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, . . . and such other matters as justice may require."²⁰

9. Mr. Hinson asserts no argument and provides no evidence to refute that his conduct was egregious, including the impact that his actions could have had on first responders and the public. Therefore, notwithstanding Mr. Hinson's assertion that he lacks the ability to pay the forfeiture, we decline to grant Mr. Hinson's request for a downward adjustment of the forfeiture proposed in the *Notice*.²¹ We find that Mr. Hinson's argument about his inability to pay the forfeiture is greatly outweighed by other considerations that militate in favor of a significant forfeiture. His conduct in impersonating a critical public-safety agency in connection with his unauthorized use of the frequency was particularly egregious. This violation was also especially dangerous, posing potentially grave consequences, and we have no reason to doubt Mr. Hinson's culpability. We conclude, based upon the evidence before us, that the *Notice*'s proposed forfeiture of \$39,278 properly reflects the relevant statutory factors and our own forfeiture guidelines as they relate to Mr. Hinson's violations of section 301 of the Act.

IV. CONCLUSION

10. Based on our review of the record, we find that Ocean Adrian Hinson willfully and repeatedly violated section 301 of the Act by twice transmitting without authorization on Surry County's

¹⁵ 47 CFR § 1.80(b)(8).

¹⁶ *Notice*, 33 FCC Rcd at 9980–81, para. 10. The amount of \$19,639 represents the statutory maximum in effect when the Commission adopted the *Notice*.

¹⁷ *See id.* at 9981, para. 7.

¹⁸ *See id.* at para. 11.

¹⁹ *See generally* NAL Response.

²⁰ 47 U.S.C. § 503(b)(2)(E).

²¹ *See, e.g., Vearl Pennington and Michael Williamson*, Forfeiture Order, FCC 19-2, paras. 18–21 (2019) (declining to reduce forfeiture based on inability to pay); *Fabrice Polynice, Harold Sido and Veronise Sido, North Miami, Florida*, 33 FCC Rcd 6852, 6860–62, paras. 21–25 (2018) (declining to reduce forfeiture based on an inability to pay where conduct was egregious, intentional, and repeated); *Adrian Abramovich, Marketing Strategy Leaders, Inc., and Marketing Leaders, Inc.*, Forfeiture Order, 33 FCC Rcd 4663, 4679, para. 45 (2018) (finding that an inability to pay was "greatly outweighed by the other balancing factors that militate in favor of a large forfeiture"); *TV Max, Inc., et al.*, Forfeiture Order, 29 FCC Rcd 8648, 8661, para. 25 (2014) (noting that the Commission "has previously rejected inability to pay claims in cases of repeated or otherwise egregious violations").

public safety frequency. After evaluating the entire record, including Mr. Hinson's response to the *Notice*, we affirm the findings made in the *Notice* and decline to cancel, withdraw, or reduce the \$39,278 forfeiture proposed in the *Notice*.

V. ORDERING CLAUSES

11. Accordingly, **IT IS ORDERED** that, pursuant to section 503(b) of the Act,²² and section 1.80 of the Commission's rules,²³ Ocean Adrian Hinson **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of Thirty-Nine Thousand, Two Hundred, Seventy-Eight Dollars (\$39,278) for willfully and repeatedly violating section 301 of the Act.²⁴

12. Payment of the forfeiture shall be made in the manner provided for in section 1.80 of the Commission's rules within thirty (30) calendar days after the release of this Forfeiture Order.²⁵ If the forfeiture is not paid within the period specified, the case may be referred to the U.S. Department of Justice for enforcement of the forfeiture pursuant to section 504(a) of the Act.²⁶

13. 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),²⁷ or by wire transfer. The Commission no longer accepts Civil Penalty payments by check or money order. Below are instructions that payors should follow based on the form of payment selected:²⁸

- 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 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).²⁹ 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 dollar limitation on credit card transactions, which cannot exceed \$24,999.99.
- 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

²² 47 U.S.C. § 503(b).

²³ 47 CFR § 1.80.

²⁴ 47 U.S.C. § 301.

²⁵ 47 CFR § 1.80.

²⁶ 47 U.S.C. § 504(a).

²⁷ Payments made using the Commission's Fee Filer system do not require the submission of an FCC Form 159.

²⁸ 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.

²⁹ Instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

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.

14. 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 20554.³⁰ Questions regarding payment procedures should be directed to the Financial Operations Group Help Desk by telephone, 1-877-480-3201, or by e-mail, ARINQUIRIES@fcc.gov.

15. **IT IS FURTHER ORDERED** that a copy of this Forfeiture Order shall be sent by first class mail and certified mail, return receipt requested, to Ocean Adrian Hinson at his address of record and to Andrew G. Brown, Esq., Finger, Roemer, Brown & Mariani, L.L.P., 105 South Bridge Street, Post Office Drawer 8, Jonesville, North Carolina 28642.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

³⁰ See 47 CFR § 1.1914.