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

In the Matter of	)	
	)	
Jason M. Frawley	)	File No.: EB-FIELDWR-21-00032537
	)	NAL/Acct. No.: 202232030001
Licensee of Amateur Radio Station WA7CQ,	)	FRN: 0002984920
Lewiston, Idaho	)	
	)	

FORFEITURE ORDER

Adopted: December 26, 2024 **Released: January 3, 2025**

By the Commission: Commissioner Simington dissenting.

I. INTRODUCTION

1. We impose a penalty of $34,000 against Jason Frawley (Frawley), licensee of amateur radio station WA7CQ, Lewiston, Idaho, for willfully and repeatedly operating without authorization and interfering with the radio communications of the United States Forest Service (U.S. Forest Service) in 2021 while the U.S. Forest Service and the Idaho Department of Lands were attempting to direct the operations of fire suppression aircraft working a 1,000-acre wildfire on national forest land outside of Elk River, Idaho. The Federal Communications Commission (Commission or FCC) previously issued a Notice of Apparent Liability for Forfeiture (*NAL*), in which we found that, over a two-day period, Frawley transmitted eight times without authorization on a frequency that was allocated to, and authorized for, government use, causing harmful interference to U.S. Forest Service radio frequency operations; the Commission proposed a $34,000 fine.[1] In response, Frawley acknowledges that he operated on a frequency reserved for government use and for which he lacked any authorization but argues that he did not interfere with government communications and seeks either a cancellation or reduction of the proposed forfeiture.[2] After reviewing Frawley's response to the *NAL*, we find no reason to cancel, withdraw, or reduce the proposed penalty, and we therefore assess the $34,000 forfeiture the Commission previously proposed.

II. BACKGROUND

2. *Legal Framework.* Section 301 of the Communications Act of 1934, as amended (Act), states that "[n]o 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 or authorization granted by the Commission.[3] Section 1.903(a) of the Commission's rules requires that "[s]tations in the Wireless Radio Services must be used and operated only in accordance with the rules applicable to their particular service [. . .] and with a valid authorization granted by the Commission."[4] The term "Wireless Radio

[1] *Jason M. Frawley; Licensee of Amateur Radio Station WA7CQ, Lewiston, Idaho,* Notice of Apparent Liability for Forfeiture, 37 FCC Rcd 7208, 7209-12, paras. 6-13 (2022) (*NAL*). The facts presented in the *NAL*, to the extent not discussed below, are incorporated herein by reference.

[2] *See* Jason M. Frawley*,* Response to Notice of Apparent Liability for Forfeiture (July 8, 2022) (on file in EB-FIELDWR-21-00032537) (NAL Response).

[3] 47 U.S.C. § 301.

Services" is defined as including, *inter alia*, all radio services authorized under part 97 (Amateur Radio Services) of the Commission's rules.[5]

3. 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 station licensed or authorized by or under [the Act] or operated by the United States government."[6] The legislative history for section 333 of the Act identifies willful and malicious interference as "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."[7] Section 97.101(d) of the Commission's rules states that "[n]o amateur operator shall willfully or maliciously interfere with or cause interference to any radio communication or signal."[8]

4. *Factual Background.* The FCC's Enforcement Bureau (Bureau) initiated an investigation of Frawley based upon a complaint it had received from the U.S. Forest Service. As discussed in more detail in the *NAL*, the complaint alleged that an individual had been transmitting without authorization on 151.145 MHz, a frequency in the Public Safety Pool that was being used jointly by the U.S. Forest Service and the Idaho Department of Lands to coordinate firefighting activities.[9] Moreover, the complaint stated that the individual had caused radio frequency interference to communications with the U.S. Forest Service firefighter's fire suppression aircraft.[10] The complaint alleged that, on July 17 and 18, 2021, the individual had interrupted fire suppression activities and had begun advising the firefighters and aircraft personnel of hazards at a radio repeater site located at Elk Butte.[11] The complaint also stated that the individual had identified himself on the radio as "comm tech" and his location as the Elk River airstrip.[12] On the afternoon of July 18, the fire operations section chief left the scene of the fire and drove to the airstrip at Elk River, where he identified Frawley as "comm tech," confirmed that it was Frawley who had been transmitting on the government frequency, and instructed him to cease operations on the frequency.[13]

5. On July 22, 2021, Frawley was interviewed by an agent from the U.S. Forest Service Law Enforcement and Investigations Branch (Agent) about the incident.[14] During the interview, the

(Continued from previous page)
[4] 47 CFR § 1.903(a).

[5] *Id.* § 1.907.

[6] 47 U.S.C. § 333.

[7] H.R. Rep. No. 101-316, 101st Cong. 1st Sess. 8 (1989).

[8] 47 CFR § 97.101(d).

[9] *NAL*, *supra* note 1, at 7209, para. 6; *see also* 47 CFR § 90.20(c)(3) (indicating that 151.145 MHz is in the Public Safety Pool Frequency Table). The National Telecommunications and Information Administration (NTIA) issued three authorizations to the U.S. Forest Service for use of frequency 151.145 MHz: A001271, A041200, and A183000. We note that the Notice of Apparent Liability for Forfeiture inadvertently used the plural term "frequencies" or "government frequencies", rather than the singular, when referencing the interference experienced by the U.S. Forest Service on frequency 151.145 MHz. *See e.g.*, *id*. at 7209. Accordingly, these references are corrected herein to read "frequency" or "government frequency." Use of the plural, rather than the singular, had no effect on the analysis or proposed findings in the *NAL*.

[10] *NAL*, *supra* note 1, at 7209, para. 6.

[11] *Id.*

[12] *Id.*

[13] *Id.*

[14] *Id.* at 7209, para. 7.

Agent read to Frawley the handwritten, time-recorded notes documenting the number and nature of Frawley's radio transmissions that had been provided to the Agent by the fire operations section chief.[15] Frawley admitted to having made transmissions on a government frequency on July 17 and 18, 2021, and confirmed that he was not licensed to be operating on that frequency.[16] At the conclusion of the interview, the Agent ordered Frawley to cease and desist all radio transmissions on U.S. Forest Service frequencies.[17]

6. On June 8, 2022, the Commission issued the *NAL*, proposing a $34,000 penalty for violations of sections 301 and 333 of the Act and sections 1.903(a) and 97.101(d) of the Commission's rules for willfully and repeatedly operating without a license on government frequencies and for causing interference to U.S. Forest Service communications.[18] On July 8, 2022, Frawley filed the NAL Response.[19] The NAL Response does not contest our findings with respect to his unauthorized operation on a government frequency but argues that he made six transmissions not eight,[20] that the total duration of the transmissions (including the firefighters' responses) was less than one minute,[21] and that he did not cause interference to ongoing communications.[22] The NAL Response also seeks a reduction or cancellation of the proposed forfeiture based on the number and duration of the unauthorized transmissions,[23] his "good faith and non-malicious intent to help,"[24] his history of compliance and corrective measures,[25] and his inability to pay the proposed forfeiture.[26] In support of his inability to pay argument, Frawley submitted financial information, including IRS Forms 1040 filed for tax years 2018, 2019, and 2020.[27] In October 2022 and April 2023, Frawley submitted updated financial information, including IRS Forms 1040 for tax years 2021 and 2022.[28]

III. DISCUSSION

7. In the *NAL*,[29] the Commission proposed a forfeiture in accordance with section 503(b) of

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[15] *See* Complaint from Special Agent, Northern Region, Law Enforcement and Investigations Branch, U.S. Forest Service, to Senior Agent, Portland Office, Region Three, Office of the Field Director, Enforcement Bureau, Federal Communications Commission (July 22, 2021) (on file in EB-FIELDWR-21-00032537) (Agent Report).

[16] *Id.*

[17] *See NAL*, *supra* note 1, at 7210, para. 7.

[18] *Id.* at 7210-12, paras. 8-9, 12.

[19] *See generally* NAL Response, *supra* note 2.

[20] *See* NAL Response, *supra* note 2, at 1.

[21] *Id.*

[22] *Id.* at 2.

[23] *See id.* at 1.

[24] *Id.* at 2, 4.

[25] *See id.* at 2-3, 4.

[26] *See id.* at 4.

[27] *See id.* at Attachment.

[28] *See id*. at 1; Jason M. Frawley, Supplement (Oct. 19, 2022) (on file in EB-FIELDWR-21-00032537); *see also* Jason M. Frawley, Second Supplement (Apr. 26, 2023) (on file in EB-FIELDWR-21-00032537).

[29] *NAL*, *supra* note 1, at 7211-12, paras. 11-12.

the Act,[30] section 1.80 of the Commission's rules,[31] and the Commission's *1997 Forfeiture Policy Statement*.[32] Section 503(b)(2)(E) 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."[33] No one factor is always paramount; rather, they are assessed individually as warranted by the facts and law of the case.[34] In the NAL Response, Frawley: (a) admits to violating section 301 of the Act; (b) argues that he did not violate section 333 of the Act; and (c) argues that the forfeiture proposed in the *NAL* should be reduced or eliminated because: (i) his transmissions constituted a "good faith and non-malicious intent to help"[35] firefighters; (ii) he has a history of compliance with the Commission's rules and took corrective actions; and (iii) he lacks the ability to pay the full forfeiture proposed in the *NAL*. We have fully considered the arguments and accompanying financial information set forth in Frawley's NAL Response and subsequent filings, but we find none of them persuasive. We therefore affirm the $34,000 forfeiture proposed in the *NAL*.

A. Frawley Violated Section 301 of the Act and Section 1.903(a) of the Commission's Rules by Engaging in Unauthorized Operation.

8. We find that Frawley, by his own admission, willfully and repeatedly violated section 301 of the Act and section 1.903(a) of the Commission's rules when, on July 17 and 18, 2021, he made multiple radio transmissions on a frequency for which he did not have a license.[36] Specifically, Frawley made multiple transmissions[37] on 151.145 MHz, a frequency for which the U.S. Forest Service was authorized to use and Frawley was not.[38] We base this finding on the fire operations section chief's contemporaneous notes,[39] Frawley's statement to the Agent,[40] and Frawley's written responses to the Commission,[41] in which Frawley admits that he made transmissions on a frequency for which he did not have a license to operate, while contending that he made two fewer unauthorized transmissions than

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[30] 47 U.S.C. § 503(b) (providing that any person who "willfully or repeatedly failed 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 to the United States for a forfeiture penalty").

[31] 47 CFR § 1.80.

[32] *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) (*1997 Forfeiture Policy Statement*), *recons. denied*, Memorandum Opinion and Order, 15 FCC Rcd 303 (1999).

[33] 47 U.S.C. § 503(b)(2)(E).

[34] *See Purple Communications, Inc.,* Forfeiture Order, 30 FCC Rcd 14892, 14903, para. 32 (2015) (explaining that the Commission is required to "take into consideration each of the statutory factors," and there should be a "balanced assessment" of each of the factors).

[35] NAL Response, *supra* note 2, at 2, 4.

[36] *See* 47 U.S.C. § 301; 47 CFR § 1.903(a).

[37] *See* NAL Response, *supra* note 2, at 1. Frawley's attempt to make a factual distinction regarding the number of his unauthorized transmissions on a government frequency is irrelevant to our analysis herein. Regardless of the number of transmissions, the forfeiture amount would not change as it is based on the number of days of unauthorized transmissions, not the total number of unauthorized transmissions. Accordingly, we reject Frawley's argument that the forfeiture should be reduced because of the number of unauthorized transmissions he claims to have made.

[38] *See supra* note 9 and accompanying text.

[39] *See generally* Agent Report, *supra* note 15.

[40] *See id.* at 1.

[41] *See* NAL Response, *supra* note 2, at 1.

stated in the *NAL*.[42] Moreover, nowhere in these documents does Frawley dispute the core factual finding that he lacked authority to operate on a government frequency.

B. Frawley Violated Section 333 of the Act and Section 97.101(d) of the Commission's Rules by Willfully Causing Interference to the U.S. Forest Service.

9. We find that Frawley willfully violated section 333 of the Act and section 97.101(d) of the Commission's rules when he caused harmful interference to U.S. Forest Service communications. Frawley admits to willfully making multiple unauthorized transmissions on a government frequency, 151.145 MHz, while the U.S. Forest Service and the Idaho Department of Lands were using that frequency in an attempt to direct the operations of fire suppression aircraft.[43] These transmissions interfered with U.S. Forest Service personnel conducting legitimate communications because first responders could not use the government frequency while Frawley was transmitting. In fact, Frawley's conduct had the effect of disrupting communications so much that his use of 151.145 MHz prompted the fire operations section chief to leave the scene of a fire (where he had been directing operations by radio), drive to Frawley's location, and order Frawley to cease operations.[44] This finding of a violation of section 333 of the Act is consistent with Commission precedent. Specifically, in the *Jay Peralta NAL*, which also involved interference to public safety communications, the Commission found that unauthorized transmissions on frequencies licensed to public safety entities violated section 333 of the Act when the unauthorized transmissions "disrupt[ed] communications between public safety personnel and central dispatchers while the frequencies were being used to respond to an emergency."[45]

10. We are unpersuaded by Frawley's attempt to distinguish his violations of section 333 from cases cited in the *NAL*, which he asserts "generally involve malicious intent, deliberate jamming, and repeated or continuing violation over much longer durations after warnings were first given."[46] While we acknowledge that many of our decisions involving violations of section 333 of the Act involve both willful and malicious conduct, others do not. For example, in 2022, the Commission affirmed the Bureau's forfeiture order in *Ravi's Import Warehouse*, which found that the company's operation of a signal jammer constituted willful interference under section 333 of the Act.[47] When applying the term "willfully," we look to section 312(f)(1) of the Act, which defines "willful" as "the conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate" the law.[48] Commission precedent has applied this interpretation of willful in the context of section 503 of the Act, as well.[49] We similarly interpret "willfully" in the context of section 333 as having that meaning. This

[42] *Id.* at 1-2. Despite claiming that he made fewer transmissions than claimed in the NAL, Frawley fails to argue how a difference in the number of transmissions would have changed the Commission's analysis of his violation of section 301 of the Act. *Id.*

[43] *See id*. at 1 (stating "in fact Frawley made only six (6) such transmissions."). Frawley's argument that the duration of his unauthorized transmissions on a government frequency was less than one minute is not decisionally significant. The duration of the transmissions is immaterial.

[44] *See Jay Peralta*, 32 FCC Rcd 3246, 3249, para. 8 (2017) ("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.") (*Jay Peralta NAL*), *forf. ordered*, Forfeiture Order, 32 FCC Rcd 7993 (2017).

[45] *See id.* (noting that even if communications were not explicitly interrupted, the admitted unauthorized transmissions were disruptive to officer-dispatcher communications and, therefore, violated section 333 of the Act).

[46] NAL Response, *supra* note 2, at 2 (emphasis omitted).

[47] *Ravi's Import Warehouse, Inc.*, *Dallas, Texas*, Memorandum Opinion and Order, 37 FCC Rcd 1575, 1578, para. 11 (2022), *aff'g*, Forfeiture Order, 33 FCC Rcd 3913 (EB 2018).

[48] 47 U.S.C. § 312(f)(1)

approach avoids conflicting definitions in the enforcement of section 333 via section 503(b).[50] Turning to the facts of this case, Frawley admitted to having made multiple unauthorized transmissions on a frequency assigned to the U.S. Forest Service while the U.S. Forest Service was using that frequency to coordinate firefighting activities.[51] Accordingly, Frawley's actions were willful and therefore violated section 333 of the Act. Having found that Frawley's interference to the U.S. Forest Service was willful, we need not analyze the expressed purpose of his transmissions to find a violation under the statute.[52]

C. The *NAL* Fulfills the Notice Requirement of Section 503 of the Act.

11. The Commission provided Frawley with the statutorily required notice by way of the *NAL*. We reject Frawley's assertion in the NAL Response that the Commission may only impose a forfeiture against parties for conduct that occurs after issuing a warning of some kind.[53] Frawley misunderstands when notice is required and how the Commission provides notice of an apparent violation of the Act or our rules prior to issuing a forfeiture order. Such notice is provided when the Commission issues an NAL.[54] Section 503 establishes the process under which the Commission may propose and then impose monetary penalties, and the Commission is not required first to issue a warning to a licensee and wait for subsequent violations before adopting a notice of apparent liability for forfeiture.[55] Accordingly, we decline to cancel the forfeiture, and we reject Frawley's assertion that an admonishment is more appropriate in this matter.[56]

D. The Full Forfeiture Is Warranted.

12. We have considered Frawley's requests for a reduction or elimination of the forfeiture proposed in the *NAL* and reject each, in turn.

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[49] *See, e.g.*, *Southern California Broadcasting. Co.,* Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388, para. 5 (1991), *recon. denied*, Memorandum Opinion and Order, 7 FCC Rcd 3454 (1992); *see also Callais Cablevision, Inc.*, Notice of Apparent Liability for Monetary Forfeiture, 16 FCC Rcd 1359 (2001) (finding that willful meant the person knew that he was doing the act in question, regardless of intent to violate the provision). The legislative history for section 312(f)(1) of the Act further clarifies that the definition of "willful" applies to both sections 312 and 503(b) of the Act. 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 [. . .]. 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 [. . .].").

[50] *See Cochise Consultancy, Inc. v. United States ex rel. Hunt*, 139 S. Ct. 1507, 1512 (2019) (noting that "[i]n all but the most unusual situations, a single use of a statutory phrase must have a fixed meaning").

[51] NAL Response, *supra* note 2, at 1; *see supra* note 9.

[52] *See*, *e.g.*, *Supply Room, Inc., Oxford, Alabama*, Notice of Apparent Liability for Forfeiture and Order, 28 FCC Rcd 4981, 4984, para. 8 (2013) (finding a violation under section 333 while acknowledging that the operation of multiple cellular jamming devices "may have been non-malicious"), *consent decree ordered*, Order and Consent Decree, 31 FCC Rcd 2082 (2016).

[53] NAL Response, *supra* note 2, at 2.

[54] 47 U.S.C. § 503(b)(4); *see Fabrice Polynice, North Miami, FL, et al.*, Forfeiture Order, 33 FCC Rcd 6852, 6858, para. 16 (2018) (rejecting argument that notice prior to an NAL is required).

[55] *Id*.

[56] NAL Response, *supra* note 2, at 3.

1. The *NAL* Correctly Applied the Base Forfeiture Amounts for Unauthorized Operation and Interference.

13. Consistent with section 1.80 of the Commission's rules, the *NAL* correctly applies a base forfeiture of $10,000 per violation for each of the two days that Frawley operated without a license on 151.145 MHz and $7,000 for each of the two days that Frawley caused interference to authorized stations.[57] Yet, in the NAL Response, Frawley argues that the aggregate base forfeiture of $34,000 is excessive[58] and that "[t]he cases cited in the NAL are all distinguishable," in part, because they involve more serious misconduct.[59] We note that Frawley does not make any specific argument that the distinctions from cases cited in the *NAL* are cause for a reduction in the forfeiture amount nor does he cite to any specific case in the *NAL* to illustrate such differences. The Commission applied the base forfeiture amount tailored to Frawley's specific conduct over the two-day period, and this approach is consistent with prior forfeiture amounts for similar violations.[60] We also note that in multiple cases cited in the *NAL*, the Commission imposed significant penalties *above* the base forfeiture amount by accounting for upward forfeiture adjustment factors, but the Commission chose not to apply upward adjustment factors against Frawley.[61]

2. Frawley's Asserted "Good Faith and Non-Malicious Intent to Help" Does Not Justify Reducing the Forfeiture.

14. We reject Frawley's argument that his "good faith intent to help" is cause for reduction or elimination of the forfeiture associated with his violation of sections 301 (unauthorized operation) and 333 (interference) of the Act.[62] While we acknowledge that one of the Commission's downward adjustment criteria is "good faith or voluntary disclosure," Frawley's interpretation of this downward adjustment criterion—applying his "good faith" intent toward first responders—is inconsistent with Commission precedent applying this downward adjustment factor to good faith efforts to comply with the Commission's rules. For example, in *Radio One Licenses, Inc.*, the Commission applied a downward reduction upon finding that the company "acted in good faith to comply" with applicable Commission rules by identifying its violative behavior and taking steps to cure the violation prior to an FCC inspection.[63] Frawley cites no Commission precedent to support his interpretation of this forfeiture adjustment factor.

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[57] *NAL*, *supra* note 1, at 7211, para. 11; 47 CFR § 1.80(b)(11), table 1.

[58] NAL Response, *supra* note 2, at 4.

[59] *Id.* at 2.

[60] *See*, *e.g.*, *Air-Tel, LLC*, 36 FCC Rcd 8667, 8872, para. 14 (2021) (imposing a base forfeiture of $10,000 per day for unauthorized operations); *Ravi's Import Warehouse*, 37 FCC Rcd at 1578-1579 (affirming forfeiture of $7,000 for interference); *James R. Winstead*, Notice of Apparent Liability for Forfeiture, 29 FCC Rcd 1704, 1705, para. 5 (EB 2014) (proposing a $7,000 forfeiture for interference), *consent decree ordered*, Order and Consent Decree, 29 FCC Rcd 3649 (EB 2014).

[61] *See Jay Peralta NAL,* 32 FCC Rcd at 3251 (proposing an upward adjusted forfeiture for interference from $7,000 to $21,000 per violation for egregious conduct); *see also William F. Crowell*, Notice of Apparent Liability for Forfeiture, 30 FCC Rcd 14267, 14271 (EB, Western Region, San Francisco Office 2015), *forf. ordered*, Forfeiture Order, 31 FCC Rcd 8700 (EB 2016) (assessing a forfeiture in the amount of $7,000 per day for two days for causing intentional interference to amateur radio operators, plus upward adjustment of $3,000 for disregard of prior warning).

[62] *See* NAL Response, *supra* note 2, at 2.

[63] *See*, *e.g.*, *Radio One Licenses, Inc.*, Memorandum Opinion and Order, 18 FCC Rcd 15964, 15965 (2003) (applying a downward reduction where the licensee "acted in good faith to comply" with the Commission's regulations), *recons. denied*, 18 FCC Rcd 25481 (2003).

15. Further, even if we were to credit Frawley's unsupported interpretation of the "good faith" downward adjustment factor, we would not grant such a reduction in this case. Frawley's unauthorized use of 151.145 MHz was particularly serious and could have had significant negative consequences for first responders, who were fighting a significant wildfire.[64] Accordingly, even if we accepted Frawley's expansive view of the scope of the Commission's application of downward adjustments, we would decline to grant such an adjustment here because of the nature of Frawley's conduct.

3. Frawley's History of Compliance and Corrective Actions Do Not Justify Reducing the Forfeiture.

16. We reject Frawley's request for a general reduction or cancellation of the proposed forfeiture based on his history of overall compliance.[65] A violator's history of compliance is but one of several factors the Commission must consider when determining an appropriate forfeiture under section 503 of the Act and our forfeiture guidelines. It must also consider "the nature, circumstances, extent, and gravity of the violation and, with respect to the violator, the degree of culpability, . . . and such other matters as justice may require."[66] To that end, the Commission may take into account the seriousness of a violation in considering whether a licensee has a history of overall compliance.[67] In this instance, Frawley admits to having made numerous transmissions over a two-day period on public safety frequencies for which he did not have a license.[68] Moreover, Frawley did not stop transmitting until the fire operations section chief paused coordinating firefighting operations, left the fire, drove to the Elk River airstrip, and instructed him to cease transmitting on public safety frequencies. Frawley's acknowledged unauthorized use of the frequency and the resulting interference disrupted communications between the section chief and firefighters, which could have resulted in substantial harm to life and property. When balanced against the seriousness of the violations, we find that Frawley's asserted history of compliance does not warrant a reduction of the forfeiture.[69]

17. Frawley's argument for a forfeiture reduction based on his corrective actions are similarly unpersuasive. Frawley asserts that he is no longer engaging in unauthorized transmissions on public safety frequencies[70] and, moreover, that the "wide publicity" surrounding this matter has already deterred

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[64] *See supra*, para. 4.

[65] *See* NAL Response, *supra* note 2, at 4.

[66] 47 U.S.C. § 503(b)(2)(E).

[67] *See Syntax-Brillian Corporation,* Forfeiture Order and Notice of Apparent Liability for Forfeiture, 23 FCC Rcd 6323, 6339, para. 36 (2008) (stating that "forfeitures are not automatically increased or decreased on a factor-by-factor basis" and that the Commission "may decline to assign any weight to a particular factor in a given case."); *see also World Media Broadcast Company,* Forfeiture Order, 26 FCC Rcd 6858, 6860, para. 9 (EB 2011) (denying a reduction for a history of compliance due to "the duration and seriousness of the violation . . ."); *Commercial Radio Service Corp.*, Forfeiture Order, 16 FCC Rcd 3543, 3545, para. 7 (EB 2001) (denying a reduction for a history of overall compliance where the licensee operated eleven specialized mobile radio stations without authorization for five months).

[68] NAL Response, *supra* note 2, at 1.

[69] *See Liability of Tuscarawas Broadcasting Co.,* Memorandum Opinion and Order, 12 F.C.C.2d 604, 604-05, para. 4 (1968) (concluding that the fact that the violation was a first offense does not warrant forfeiture reduction because it "does not excuse licensee from its basic responsibility to comply with the Commission's rules."); *see also Ravi's Import Warehouse*, Memorandum Opinion and Order, 37 FCC Rcd 1575, 1578-79, para. 13 (2022) (rejecting an argument for a forfeiture reduction against a non-licensee based on the fact that "the violation was a first offense."). Although, in the present case, we find that the seriousness of Frawley's misconduct outweighs his asserted history of overall compliance with the Commission's rules, we question whether a downward adjustment for overall compliance should ever be afforded to a Commission licensee, such as Frawley, who willfully operates on a frequency allocated for a service in which the licensee is not authorized to operate.

similar behavior by himself and others.[71] We recognize that the Commission has generally provided a forfeiture reduction in cases in which the violator demonstrates that they initiated corrective measures before the Commission's investigation.[72] The present case, however, is distinguishable. The Commission's precedents involve circumstances in which the violator took affirmative steps to remedy an ongoing or persistent violation of the Commission's rules.[73] In this case, however, Frawley was not attempting to remedy a flawed or missing application,[74] nor was he installing required (but missing) equipment.[75] Instead Frawley's so-called corrective measure was his decision to cease his willful and repeated violations of sections 301 and 333 of the Act, only doing so after being approached by the fire operations section chief from the U.S. Forest Service. We decline to grant a downward adjustment based solely on a violator's inaction.

4. Frawley's Ability to Pay the Forfeiture Does Not Override the Need to Protect Public Safety Frequencies.

18. In the NAL Response, Frawley seeks a reduction of the forfeiture based on his ability to pay.[76] Frawley has provided the required documentation to demonstrate his ability to pay the forfeiture,[77] and we have considered it. Although we acknowledge that Frawley's financial documents, standing alone, could support a reduction, we do not view this statutory provision in a vacuum.[78] Notably, we must consider that Frawley's multiple interruptions of public safety communications had a substantial impact that caused the Johnson Creek fire operations section chief to leave the scene of a fire, potentially affecting the safety of first responders. Given the seriousness of this disruption and the risk of harm to first responders and the public, we decline to reduce the forfeiture based on Frawley's ability to pay. Instead, given the totality of the circumstances and facts before us, we find his ability to pay is outweighed by the nature of the violations themselves and their potential threat to public safety communications.[79]

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[70] *See* NAL Response, *supra* note 2, at 3.

[71] *See id*. at 4. Frawley seems to argue for a forfeiture reduction because the publicity surrounding the *NAL* will also deter him from future misconduct. *Id.* We reject such a notion and remind Frawley that "[t]he Commission expects, and it is each licensee's obligation, to know and comply with all of the Commission's rules." *1997 Forfeiture Policy Statement*, *supra* note 32, at 17099, para. 22.

[72] *See, e.g.*, *Sutro Corp.*, Memorandum Opinion and Order, 19 FCC Rcd 15274, 15277, para. 10 (2004); *accord Cumulus Radio LLC*, Forfeiture Order, 36 FCC Rcd 738, 750, para. 32 (2021); *Bold Gold Media WBS, L.P.*, Forfeiture Order, 29 FCC Rcd 6016, 6019, para. 9 (EB 2014).

[73] *See*, *e.g.*, *Bold Gold Media*, 29 FCC Rcd at 6019, para. 9 (granting reduction for contracting to obtain EAS equipment prior to inspection by Commission personnel); *Board of Regents, Northwest Missouri State University*, Forfeiture Order, 25 FCC Rcd 3119, 3121, para. 6 (EB 2010) (granting reduction for ongoing attempts to file a station's renewal application and by notifying Commission personnel when the licensee realized that the application had not been timely filed).

[74] *See*, *e.g.*, *Board of Regents*, 25 FCC Rcd at 3121, para. 6.

[75] *See*, *e.g.*, *Bold Gold Media*, 29 FCC Rcd at 6019, para. 9.

[76] *See* NAL Response, *supra* note 2, at 4.

[77] *See supra* para. 6; *see*, *e.g.*, *1997 Forfeiture Policy Statement*, *supra* note 32, at 17106, para. 43.

[78] *See Central Telecom Long Distance, Inc.,* Forfeiture Order, 31 FCC Rcd 10392, 10410-11, paras. 42-44 (2016); *Purple Communications, Inc.,* Forfeiture Order, 30 FCC Rcd 14892, 14903-04, paras. 32-33 (2015) (acknowledging that "standing alone, Purple's financial documents might support a reduction," but in applying the additional balancing factors determined that no reduction was warranted).

[79] *See*, *e.g.*, *Ocean Adrian Hinson, Surry County, North Carolina*, Forfeiture Order, 34 FCC Rcd 7619, 7621, para. 9 (2019) (finding that the "inability to pay the forfeiture is greatly outweighed by other considerations that militate in favor of a significant forfeiture.").

19. After considering the relevant statutory factors, the Commission's rules, and the Commission's *Forfeiture Policy Statement*, we find that Frawley is liable for a total forfeiture of $34,000. As explained in the *NAL*,[80] this total results from Frawley's willful and repeated violation of sections 301 and 333 of the Act and sections 1.903(a) and 97.101(d) of the Commission's rules.[81] Weighing the applicable statutory factors and our own forfeiture guidelines, we conclude, based upon the evidence before us, that the proposed forfeiture of $34,000 properly reflects the seriousness, duration, and scope of Frawley's violations.

IV. CONCLUSION

20. Based on the record before us and in light of the applicable statutory factors, we conclude that Frawley willfully and repeatedly violated sections 301 and 333 of the Act,[82] and sections 1.903(a) and 97.101(d) of the Commission's rules.[83] We decline to cancel or reduce the $34,000 forfeiture proposed in the *NAL* for the reasons stated herein.

V. ORDERING CLAUSES

21. Accordingly, **IT IS ORDERED** that, pursuant to section 503(b) of the Communications Act of 1934, as amended, 47 U.S.C. § 503(b), and section 1.80 of the Commission's rules, 47 CFR § 1.80, Jason M. Frawley **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of thirty-four thousand dollars ($34,000) for willfully and repeatedly violating sections 301 and 333 of the Act, 47 U.S.C. §§ 301, 333, and sections 1.903(a) and 97.101(d) of the Commission's rules, 47 CFR §§ 1.903(a), 97.101(d).

22. 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.[84] Jason M. Frawley shall send electronic notification of payment to the Office of the Field Director, Enforcement Bureau, Federal Communications Commission, at field@fcc.gov on the date said payment is made. 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.[85]

23. In order for Jason M. Frawley to pay the proposed forfeiture, Jason M. Frawley shall notify the Office of the Field Director at field@fcc.gov of his intent to pay, whereupon an invoice will be posted in the Commission's Registration System (CORES) at https://apps.fcc.gov/cores/userLogin.do. Payment of the forfeiture must be made by credit card using CORES at https://apps.fcc.gov/cores/userLogin.do, ACH (Automated Clearing House) debit from a bank account, or by wire transfer from a bank account. The Commission no longer accepts forfeiture payments by check or money order. Below are instructions that payors should follow based on the form of payment selected:[86]

- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. In the OBI field, enter the FRN(s) captioned above and the letters "FORF." In addition, a completed Form 159[87] or printed CORES form[88]

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[80] *See NAL*, *supra* note 1, at 7210-11, paras. 8-10.

[81] *See* 47 U.S.C. §§ 301, 333; 47 CFR §§ 1.903(a), 97.101(d).

[82] 47 U.S.C. §§ 301, 333.

[83] 47 CFR §§ 1.903(a), 97.101(d).

[84] *See id*. § 1.80.

[85] 47 U.S.C. § 504(a).

[86] For questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone at 1-877-480-3201 (option #6).

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 or CORES may result in payment not being recognized as having been received. When completing FCC Form 159 or CORES, 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).[89] 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 CORES at https://apps.fcc.gov/cores/userLogin.do. To pay by credit card, log-in using the FCC Username associated to the FRN captioned above. If payment must be split across FRNs, complete this process for each FRN. Next, select "Manage Existing FRNs | FRN Financial | Bills & Fees" from the CORES Menu, then select FRN Financial and the view/make payments option next to the FRN. Select the "Open Bills" tab and find the bill number associated with the NAL Acct. No. The bill number is the NAL Acct. No. with the first two digits excluded (e.g., NAL 1912345678 would be associated with FCC Bill Number 12345678). After selecting the bill for payment, choose the "Pay by Credit Card" option. Please note that there is a $24,999.99 limit on credit card transactions.
- Payment by ACH must be made by using CORES at https://apps.fcc.gov/cores/userLogin.do. To pay by ACH, log-in using the FCC Username associated to the FRN captioned above. If payment must be split across FRNs, complete this process for each FRN. Next, select "Manage Existing FRNs | FRN Financial | Bills & Fees" on the CORES Menu, then select FRN Financial and the view/make payments option next to the FRN. Select the "Open Bills" tab and find the bill number associated with the NAL Acct. No. The bill number is the NAL Acct. No. with the first two digits excluded (e.g., NAL 1912345678 would be associated with FCC Bill Number 12345678). Finally, 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.

24. Any request for making full payment over time under an installment plan should be sent to: Chief Financial Officer – Financial Operations, Federal Communications Commission, 45 L Street NE, Washington, DC 20554.[90] 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.

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[87] FCC Form 159 is accessible at https://www.fcc.gov/licensing-databases/fees/fcc-remittance-advice-form-159.

[88] Information completed using the Commission's Registration System (CORES) does not require the submission of an FCC Form 159. CORES is accessible at https://apps.fcc.gov/cores/userLogin.do.

[89] Instructions for completing the form may be obtained at http://www.fcc.gov/Forms/Form159/159.pdf.

[90] *See* 47 CFR § 1.1914.

25. **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 Jason M. Frawley at his address of record, and Barry Skidelsky, Esq., Counsel to Jason M. Frawley, 185 East 85th Street, 23D, New York, NY 10028.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary