

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

In the Matter of)
James R. Winstead) File No.: EB-FIELDSCR-14-00013418
Licensee of Amateur Station KD5OZY) NAL/Acct. No.: 201432500003
Coleman, Texas) FRN: 0005642657

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: February 19, 2014

Released: February 19, 2014

By the District Director, Dallas Office, South Central Region, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture (NAL), we find that James R. Winstead, licensee of Amateur Station KD5OZY, in Coleman, Texas (Station), apparently willfully violated Section 333 of the Communications Act of 1934, as amended (Act), and Section 97.101(d) of the Commission’s rules (Rules),¹ by operating a radio transmitter to interfere with the communications of other licensees. We conclude that Mr. Winstead is apparently liable for a forfeiture in the amount of seven thousand dollars (\$7,000).

II. BACKGROUND

2. On January 21, 2014, in response to several complaints of intentional interference from amateur licensees on the frequency 7.195 MHz, an agent of the Enforcement Bureau’s Dallas Office (Dallas Office), using mobile direction finding techniques, positively identified the source of transmissions to 207 S. Commercial Avenue, Coleman, Texas, the address of record for Mr. Winstead’s Station. The agent monitored the transmissions emanating from the Station for approximately 30 minutes and heard Mr. Winstead replay multiple times short sentences or conversations that had just been transmitted and occasionally speak the word “George.” Mr. Winstead replayed recorded conversations so frequently that other licensees were unable to complete their conversations.² The agent identified himself, requested to inspect the radio station located on the premises, inspected Mr. Winstead’s amateur radio station, and observed that his radio equipment was tuned to the frequency 7.195 MHz. During the inspection, Mr. Winstead showed the agent how he recorded and retransmitted other amateur licensees’ communications. He also admitted that he intentionally interfered with amateur communications on 7.195 MHz and had an ongoing disagreement with another amateur licensee named George.

III. DISCUSSION

3. 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

¹ 47 U.S.C. § 333; 47 C.F.R. § 97.101(d).

² The agent estimates that Mr. Winstead disrupted approximately 20-23 minutes worth of conversations over a 30-minute period, by transmitting many short transmissions totaling about 12-15 minutes.

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.³ 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.⁴ 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,⁵ and the Commission has so interpreted the term in the Section 503(b) context.⁶

A. Intentional Interference to Licensed Amateur Radio Communications

4. The evidence in this case is sufficient to establish that Mr. Winstead violated Section 333 of the Act and Section 97.101(d) of the Rules. Section 333 of the Act prohibits any person from willfully or maliciously interfering with or causing interference to any radio communications of any licensed station.⁷ Section 97.101(d) of the Rules states that “[n]o amateur operator shall willfully or maliciously interfere with or cause interference to any radio communication or signal.”⁸ On January 21, 2014, an agent from the Dallas Office determined that Mr. Winstead retransmitted multiple times short sentences and conversations of other licensees and spoke the word “George.” These transmissions were so frequent that they did not appear to have any purpose other than to interfere with the communications of other licensees. During an inspection of his Station, Mr. Winstead admitted that he had been trying to interfere with other amateur licensees’ communications. Based on the evidence before us, we find that Mr. Winstead apparently willfully violated Section 333 of the Act and Section 97.101(d) of the Rules by intentionally interfering with other licensed amateur radio communications.

B. Proposed Forfeiture

5. Pursuant to the Commission’s *Forfeiture Policy Statement* and Section 1.80 of the Rules, the base forfeiture amount for interference to radio communications is \$7,000.⁹ In assessing the monetary forfeiture amount, we must also 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.¹⁰ Applying the *Forfeiture Policy Statement*, Section 1.80 of the Rules, and the statutory factors to the instant case, we conclude that Mr. Winstead is apparently liable for a total forfeiture in the amount of \$7,000 for intentionally interfering with other amateur radio communications.¹¹ We caution Mr. Winstead, however, that future violations of this kind may result in significantly higher forfeitures.

³ 47 U.S.C. § 503(b).

⁴ 47 U.S.C. § 312(f)(1).

⁵ 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.”).

⁶ See, e.g., *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388, para. 5 (1991), *recons. denied*, 7 FCC Rcd 3454 (1992).

⁷ 47 U.S.C. § 333.

⁸ 47 C.F.R. § 97.101(d).

⁹ *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*, 15 FCC Rcd 303 (1999); 47 C.F.R. § 1.80.

¹⁰ 47 U.S.C. § 503(b)(2)(E).

¹¹ See, e.g., *Daniel Granda*, Forfeiture Order, 19 FCC Rcd 12781 (Enf. Bur. 2004) (imposing \$7,000 forfeiture for violation of Section 333 of the Act and Section 97.101 of the Rules); *Robert L. Meyers*, Forfeiture Order, 15 FCC

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IV. ORDERING CLAUSES

6. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Act, and Sections 0.111, 0.204, 0.311, 0.314, and 1.80 of the Rules, James R. Winstead is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of seven thousand dollars (\$7,000) for violations of Section 333 of the Act and Section 97.101(d) of the Rules.¹²

7. **IT IS FURTHER ORDERED** that, pursuant to Section 1.80 of the Rules, within thirty (30) calendar days of the release date of this Notice of Apparent Liability for Forfeiture, James R. Winstead **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

8. Payment of the 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. Mr. Winstead shall also send electronic notification on the date said payment is made to SCR-Response@fcc.gov. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted.¹³ 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 you should follow based on the form of payment you select:

- 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.

9. 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, S.W., Room 1-A625, Washington, D.C. 20554.¹⁴ If you have questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone, 1-877-480-3201, or by e-mail, ARINQUIRIES@fcc.gov.

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Rcd 8045 (Enf. Bur. 2000) (imposing base forfeiture amount of \$7,000 for violation of Section 333 of the Act and Section 97.101 of the Rules).

¹² 47 U.S.C. §§ 333, 503(b); 47 C.F.R. §§ 0.111, 0.204, 0.311, 0.314, 1.80, 97.101(d).

¹³ An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

¹⁴ See 47 C.F.R. § 1.1914.

10. 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 Rules.¹⁵ Mail the written statement to Federal Communications Commission, Enforcement Bureau, South Central Region, Dallas Office, 9330 LBJ Freeway, Suite 1170, Dallas, Texas 75243, and include the NAL/Acct. No. referenced in the caption. Mr. Winstead also shall e-mail the written response to SCR-Response@fcc.gov.

11. 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 principles (GAAP); or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

12. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture shall be sent by both Certified Mail, Return Receipt Requested, and first class mail to James R. Winstead at his address of record.

FEDERAL COMMUNICATIONS COMMISSION

James D. Wells
District Director
Dallas Office
South Central Region
Enforcement Bureau

¹⁵ 47 C.F.R. §§ 1.16, 1.80(f)(3).