

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of)	
)	File No.: EB-FIELDNER-16-00021400 ¹
DANIEL DELISE)	NAL/Acct. No.: 201632380003
)	FRN: 0025855933
Astoria, New York)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: August 31, 2016

Released: August 31, 2016

By the Regional Director, Region One, Enforcement Bureau:

I. INTRODUCTION

1. We propose a penalty of \$23,000 against Daniel Delise for operating an unlicensed amateur radio station on the Amateur Radio Service frequency 147.96 MHz from his residence in Astoria, New York, and falsely transmitting an officer-in-distress call. The Commission previously warned Mr. Delise that unlicensed operation of this station was illegal and that continued operation could result in further enforcement action. Mr. Delise's deliberate disregard of the Act and the Commission's warning warrants a significant penalty. Commission action in this area is essential because unlicensed radio station operation create a danger of interference to licensed public safety and commercial communications. Transmission of a false officer-in-distress call potentially impacts the safety of life and property, and places a strain on valuable resources of safety and rescue agencies.

II. BACKGROUND

2. The Commission has received numerous complaints about Mr. Delise operating on an unlicensed basis on a number of different frequencies dating as far back as 2012. The Commission received complaints over a period of several months that Mr. Delise was operating without a license, and ultimately issued a Warning for Unlicensed Operation to Mr. Delise for operating on amateur radio frequencies without authorization on May 7, 2012, and again on August 3, 2012.² The letters were mailed to Mr. Delise's address of record in Astoria, NY.

3. The Commission continued to receive complaints about Mr. Delise throughout 2013 and 2014.³ On March 7 and 14, 2014, the agent investigated separate complaints about Mr. Delise causing interference on amateur radio frequencies but was not able to confirm a rule violation. However, on April 10 and September 20, 2014, the agent received additional complaints that Mr. Delise was operating without authority on 461.225 MHz, which is licensed to NYC City Wide Disaster Services, a nonprofit corporation. The Commission received 10 additional complaints in 2014 that identified Mr. Delise by

¹ The investigation began under File No. EB-FIELDNER-14-00017532 and was subsequently assigned File No. EB-FIELDNER-16-00021400. Any future correspondence with the Commission concerning this matter should reflect the new case number.

² The Commission received complaints naming Mr. Delise on Apr. 22 and 29, May 15, and June 29, 2012. *See Dan Delise*, Warning for Unlicensed Radio Operation (EB May 7, 2012) (on file in EB-FIELDNER-16-00021400), *Dan Delise*, Warning for Unlicensed Radio Operation (EB Aug. 3, 2012) (on file in EB-FIELDNER-14-00017532).

³ The Commission received complaints naming Mr. Delise on January 15; June 24, 25, and 26, July 2, August 12 and 13, and October 19 and 20, 2013, and on January 2, and February 14 and 24, 2014. Additional complaints are discussed below.

name,⁴ another nine in 2015⁵ and one in January, 2016. Because many different frequencies were being jammed over short time intervals, it was difficult for the agent to obtain the measurements necessary to demonstrate intentional interference.

4. On April 7, 2016, two field agents started to monitor the area in Astoria, NY, where Daniel Delise had been reported to reside. The agents detected strong voice transmissions on the amateur radio frequency 147.96 MHz. The agents used direction finding techniques to determine that the voice transmissions were originating from the antennas on the roof where Mr. Delise had been reported to reside. One of the agents believed he recognized the voice as that of Daniel Delise. The agent found no evidence that Mr. Delise held an Amateur Radio Service license. After determining the direction from which the radio transmissions were coming and one of the agents believing that he recognized Daniel Delise's voice in the transmissions, the field agents approached his apartment. Mr. Delise's father, Samuel Delise, gave the agents permission to enter the apartment. Once the agents were inside, Daniel Delise then permitted the agents to inspect his radio transmitting equipment. The agents were able to confirm that the voice they heard on 147.96 MHz was that of Daniel Delise. The agents explained to Daniel Delise that they were monitoring transmissions on the frequency 147.96 MHz that were emanating from his residence. He admitted to making the transmissions on the frequency 147.96 MHz with the two-way transmitting equipment in his bedroom. He also acknowledged that he did not have an amateur radio license. The agents observed that one of the mobile radios was tuned to frequency 147.96 MHz. The agents also observed that three of the mobile radios were connected to the three antennas on the roof of the building. The agents verbally warned Mr. Delise that unauthorized operation is against the law. On April 20, 2016, the Commission's New York Office issued Mr. Delise a Notice of Unlicensed Operation for operating on the Amateur Radio Service frequency 147.96 MHz without authorization on April 7, 2016.

5. On April 19, 2016, the New York City Police Department (NYPD) informed a Commission field agent that the NYPD had taken Daniel Delise into custody on Saturday April 16, 2016 for "sending out false radio transmissions over the New York City Police Department's radio transmission system" and for possessing radios that operate on NYPD frequencies without permission in violation of New York law. The NYPD report said that a call went out over the police radio for an officer in need. The first police officer on the scene confirmed he did not send out a call for an officer in need. When an NYPD officer responded to the call, he saw Daniel Delise speaking into a radio device. The report said that Mr. Delise admitted to making the transmissions, and that he said he had more radios and would continue to transmit on police frequencies. The NYPD obtained a warrant for Mr. Delise's apartment and confiscated all the radio transmitting equipment from Mr. Delise (except the antennas), including fourteen radios that transmit and receive NYPD communications.

III. DISCUSSION

6. We find that Daniel Delise apparently willfully violated Sections 301 and 325(a) of the 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.⁶ Section 325(a) of the Act prohibits "[k]nowingly utter[ing] or transmit[ting] ... any false

⁴ The Commission received complaints on September 20, 22 and 23; October 3, 4, 5, 6, and 11; November 25; and December 30, 2014.

⁵ Specifically, the Commission received complaints that identified Mr. Delise by name on the following dates: January 5, June 3, 11, and 22; July 21 and 24; and November 11 and 18, 2015. The Commission also received complaints on July 8, 16, August 31, and November 14, 2015 that did not identify Mr. Delise by name, but alleged that someone was impeding service and using profanity on amateur radio and GMRS frequencies in the area surrounding Mr. Delise's residence, which are consistent with the complaints describing Mr. Delise's actions.

⁶ 47 U.S.C. § 301.

or fraudulent signal of distress....”¹ The Act and our rules require that conduct be either willful or repeated.²

A. Operation without a License

7. We find Daniel Delise apparently willfully violated Section 301 of the Act. Section 301 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. On April 7, 2016, agents from the New York Office determined that an unlicensed radio station operated on Amateur Radio Service frequency 147.96 MHz from Mr. Delise’s residence. Mr. Delise admitted that he transmitted on frequency 147.96 MHz using the two-way transmitting equipment in his apartment. Mr. Delise also admitted that he does not have a license to operate in the Amateur Radio Service. Mr. Delise was warned by the Commission that such unlicensed operations violated the Act. As a result, we find Mr. Delise apparently willfully violated Section 301 of the Act by operating an unlicensed radio station.

B. Transmission of a False or Fraudulent Signal of Distress

8. We find Daniel Delise apparently willfully violated Section 325(a) of the Act. Pursuant to Section 325(a) of the Act, “[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.” According to the NYPD report describing Mr. Delise’s arrest, an NYPD officer heard Mr. Delise transmit an officer-in-distress call over frequencies licensed to the NYPD. An NYPD officer responded to that distress call and found Mr. Delise talking on a police radio. Mr. Delise possessed fourteen radios that operate on NYPD frequencies when he was arrested. Mr. Delise admitted to the NYPD officer that he transmitted a false officer-in-distress message. Mr. Delise said that he had other radios and would continue to transmit such messages. Based on the evidence, we find that Mr. Delise apparently willfully violated Section 325(a) of the Act by knowingly transmitting a false or fraudulent signal of distress. 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.³ The legislative history to Section 312(f)(1) of the Act makes clear 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. Mr. Delise does not deny that he made a false officer-in-distress call. Therefore, we find that his transmission of a false officer-in-distress call was willful, according to the Act.

C. Proposed Forfeiture

9. Section 503(b) of the Act authorizes the Commission to impose a forfeiture against any 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.”⁴ Here, Section 503(b)(2)(D) of the Act authorizes us to assess a forfeiture against Mr. Delise of up to \$18,936 for each violation or each day of a continuing violation, up to a statutory maximum of \$142,021 for a single act or failure to act.⁵ In exercising our

¹ 47 U.S.C. § 325(a).

² 5 47 U.S.C. § 503(b), 47 C.F.R. § 1.80(a) (emphasis added); *Southern California*, 6 FCC Rcd 4387, 4388, para. 5 (1991).

³ 47 U.S.C. § 312(f)(1).

⁴ 47 U.S.C. § 503(b).

⁵ 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

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.”⁶ 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.⁷ 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.⁸

10. Section 1.80(b) of the Rules sets a base forfeiture amount for operation without an instrument of authorization of \$10,000.⁹ For transmission of a false or fraudulent signal of distress, Section 1.80(b) of the Rules sets a base forfeiture amount of \$8,000 for each violation.¹⁰ Accordingly, we propose a total base forfeiture of \$18,000.

11. In addition, in this case, we find that an upward adjustment to the proposed base forfeiture amount is warranted. In 2012, the Commission warned Mr. Delise twice that operating without a license was a violation of the Communications Act and could result in a forfeiture penalty. If a person was warned against such action and the person subsequently engages in conduct of the type described in the warning, the Commission can issue an *NAL* proposing a forfeiture that considers both the conduct that led to the citation and the conduct following it in assessing the forfeiture.¹¹ The unlicensed operation violation in this case was egregious due to the length of time Mr. Delise operated his station after being warned that such operation violated the Act.¹² The fact that Mr. Delise continued to operate an unlicensed station after receiving notice that his actions contravened the Act also demonstrates a deliberate disregard for the Commission’s authority and requirements. Accordingly, we find that an upward adjustment of

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Improvements Act of 2015, Sec. 701, Pub. L. No. 114-74, 129 Stat. 599 (codified as amended 28 U.S.C. § 2461 note) (the 2015 Inflation Adjustment Act), requires 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, DA 16-644 (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 adjustments to the civil monetary penalties adopted by the Bureau pursuant to 2015 Inflation Adjustment Act will apply only to such penalties assessed after the effective date of the amendments to Section 1.80(b). *See* 28 U.S.C. § 2461 note (6).

⁶ 47 U.S.C. § 503(b)(2)(E).

⁷ 47 CFR § 1.80(b)(8), Note to paragraph (b)(8).

⁸ *Id.* *See also 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).

⁹ 47 CFR § 1.80(b).

¹⁰ 47 CFR § 1.80(b).

¹¹ *See* S. Rep. No. 95-580, 95th Cong., 1st Sess. at 9 (1977) (If a person or entity that has been issued a citation by the Commission thereafter engages in the conduct for which the citation of violation was sent, the subsequent notice of apparent liability “would attach not only for the conduct occurring subsequently but also for the conduct for which the citation was originally sent.”) (emphasis added).

¹² *See, e.g., Union Oil Co. of Cal.*, Notice of Apparent Liability for Forfeiture 27 FCC Rcd 13806, 13810–11, paras. 10–11 (2012) (upward adjustment of the base forfeiture because of extended duration of the violation) (forfeiture paid); *Midessa Television Ltd. P’ship*, Notice of Apparent Liability for Forfeiture, 29 FCC Rcd 13247, 13250-51, para. 11 (2014) (upward adjustment for the base forfeiture because of extended duration of the violation).

\$5,000 is warranted.¹³ Therefore, after applying the *Forfeiture Policy Statement*, Section 1.80 of the Rules, and the statutory factors, we propose a total forfeiture of \$23,000, for which Daniel Delise is apparently liable.

IV. CONCLUSION

12. We have determined that Daniel Delise apparently willfully violated Section 301 of the Act¹⁴ and Section 325(a) of the Act.¹⁵ As such, Mr. Delise is apparently liable for a forfeiture of \$23,000.

V. ORDERING CLAUSES

13. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Act¹⁶ and Sections 1.80 of the Rules,¹⁷ Daniel Delise is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of twenty-three thousand dollars (\$23,000) for willful violation of Sections 301 and 325(a) of the Act.¹⁸

14. **IT IS FURTHER ORDERED** that, pursuant to Section 1.80 of the Rules,¹⁹ within thirty (30) calendar days of the release date of this Notice of Apparent Liability for Forfeiture, Daniel Delise **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.

15. 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. Daniel Delise shall send electronic notification of payment to NER-Response@fcc.gov on the date said payment is made. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted.²⁰ 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:

- 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.

¹³ See *Robert Brown*, Memorandum Opinion and Order, 27 FCC Rcd 6975 (EB 2012), *aff'g*, Forfeiture Order, 26 FCC Rcd 6854 (EB 2011), *aff'g*, Notice of Apparent Liability for Forfeiture, 25 FCC Rcd 13740 (EB 2010) (upwardly adjusted proposed forfeiture by \$5,000 because violator operated an unlicensed radio station after receiving a written warning that such action violated the Act and Rules); *Lloyd Morris*, Memorandum Opinion and Order, 27 FCC Rcd 6979 (EB 2012), *aff'g*, Forfeiture Order, 26 FCC Rcd 6856 (EB 2011), *aff'g*, Notice of Apparent Liability for Forfeiture, 25 FCC Rcd 13736 (EB 2010) (same).

¹⁴ 47 U.S.C. § 301.

¹⁵ 47 U.S.C. § 325(a).

¹⁶ 47 U.S.C. § 503(b).

¹⁷ 47 CFR § 1.80.

¹⁸ 47 U.S.C. §§ 301, 325(a).

¹⁹ 47 CFR § 1.80.

²⁰ An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

- 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.

16. 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 20554.²¹ 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.

17. 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.²² The written statement must be mailed to the Federal Communications Commission, Enforcement Bureau, Region One, New York Office, 201 Varick Street, Suite 1151, New York, NY 10014, and must include the NAL/Account Number referenced in the caption. The statement must also be e-mailed to NER-Response@fcc.gov.

18. 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.

19. **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 Daniel Delise at his address of record.

FEDERAL COMMUNICATIONS COMMISSION

David C. Dombrowski
Regional Director
Region One
Enforcement Bureau

²¹ See 47 CFR § 1.1914.

²² 47 CFR §§ 1.16, 1.80(f)(3).