

Federal Communications Commission

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

In the Matter of)	
)	
Jose Torres)	File Number EB-08-PA-0180
)	
Licensee of Station N3TX)	NAL/Acct. No. 200932400002
)	
Philadelphia, Pennsylvania)	FRN 0001-83-1825

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: January 6, 2009

By the District Director, Philadelphia Office, Northeast Region, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture (“NAL”), we find that Jose Torres (“Torres”), the licensee of Amateur Extra Class Station N3TX in Philadelphia, Pennsylvania, apparently willfully and repeatedly operated his amateur station on an unauthorized frequency, in violation of Section 1.903(a) of the Communications Act of 1934, as amended (“Act”).¹ We conclude, pursuant to Section 503(b) of the Communications Act of 1934, as amended (“Act”),² that Torres is apparently liable for a forfeiture in the amount of four thousand dollars (\$4,000). We also admonish Jose Torres for failing to transmit his call sign, in violation of Section 97.119(a) of the Rules.³

II. BACKGROUND

2. On December 11, 2007, in response to a complaint of interference to over-the-air television reception, agents from the FCC’s Philadelphia Office drove to the complainant’s residence and began monitoring the frequencies in and around the Citizens Band (CB) from 26.965 MHz to 27.405 MHz. Between approximately 6:50 p.m. and 7:10 p.m. and between approximately 8:40 p.m. and 9:00 p.m. that evening, the agents observed transmissions on the frequency 26.71 MHz. The agents contacted the complainant and confirmed that the harmful interference to the television reception was occurring during the times when the agents observed the transmissions on 26.71 MHz. The agents used direction finding techniques and identified the source of the signal on 26.71 MHz as Jose Torres’s residence, which is located in close proximity to the complainant’s residence in Philadelphia, Pennsylvania. The agents did not observe any station identification announced during the radio transmissions on 26.71 MHz.

3. On December 11, 2007 at 9:10 pm, the agents inspected the radio station located at Torres’s residence. When the agents arrived, they observed that Torres’s radio transmitting equipment

¹ 47 U.S.C. § 1.903(a).

² 47 U.S.C. § 503(b).

³ 47 U.S.C. § 97.119(a).

was turned off. When Torres turned the radio transmitting equipment on, the agents observed that it was tuned to the frequency 26.71 MHz. During the inspection, Torres claimed that he was not transmitting on the frequency 26.71 MHz but he was listening to the Spanish conversation on 26.71 MHz. Torres also informed the agents that he holds an Amateur Extra Class License under the call sign N3TX. The agents informed Torres that the Amateur Extra Class License does not authorize him to operate on 26.71 MHz and that he must cease all transmissions on 26.71 MHz immediately⁴.

4. On January 7, 2008, the Philadelphia Office issued Jose Torres a Notice of Violation for operating on an unauthorized frequency, in violation of Section 1.903(a) of the Rules, and for failing to transmit the call sign identification, in violation of Section 97.119(a) of the Rules. On February 6, 2008, and February 8, 2008, the FCC Philadelphia Office received two separate letters of similar content from Jose Torres, in response to the Notice of Violation. In his responses, Torres stated “[w]ith this writing respond I agree to the Notice listed above. I fully understand the violation. According to my license N3TX I will transmit where I’m authorized, at the Extra Class portion only.”

5. On February 15, 2008, the FCC Philadelphia Office received an e-mail from the complainant alleging that the harmful interference to the television has reappeared and is affecting the reception of over-the-air television programming.

6. In response to a complaint that the interference had returned, agents initiated another investigation. On April 17, 2008, between 8:00 pm and 9:30 pm and on June 2, 2008 between 3:00 pm and 3:40 pm, agents from the FCC’s Philadelphia Office monitored and recorded radio transmissions on the frequency 26.71 MHz. The agents used direction finding techniques to locate the source of the transmission on 26.71 MHz to Torres’s residence. At no time did Torres identify his communications by transmitting his Amateur station call sign N3TX.

III. DISCUSSION

7. 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. The term “willful” as used in Section 503(b) of the Act has been interpreted to mean simply that the acts or omissions are committed knowingly.⁵ The term “repeated” means

⁴ Section 97.301 of the Act, 47 U.S.C. § 97.301, states that an Amateur Extra Class operator is authorized to transmit on the following frequencies: 1.800-2.000 MHz: CW, Phone, Image, RTTY/Data; 3.500-3.600 MHz: CW, RTTY/Data; 3.600-4.000 MHz: CW, Phone, Image; 7.000-7.125 MHz: CW, RTTY/Data; 7.125-7.300 MHz: CW, Phone, Image; 10.100-10.150 MHz: CW, RTTY/Data; 14.000-14.150 MHz: CW, RTTY/Data; 14.150-14.350 MHz: CW, Phone, Image; 18.068-18.110 MHz: CW, RTTY/Data; 18.110-18.168 MHz: CW, Phone, Image; 21.000-21.200 MHz: CW, RTTY/Data; 21.200-21.450 MHz: CW, Phone, Image; 24.890-24.930 MHz: CW, RTTY/Data; 24.930-24.990 MHz: CW, Phone, Image; 28.000-28.300 MHz: CW, RTTY/Data; 28.300-29.700 MHz: CW, Phone, Image; 50.0-50.1 MHz: CW Only; 50.1-54.0 MHz: CW, Phone, Image, MCW, RTTY/Data; 144.0-144.1 MHz: CW Only; 144.1-148.0 MHz: CW, Phone, Image, MCW, RTTY/Data; 222.00-225.00 MHz: CW, Phone, Image, MCW, RTTY/Data; 420.0-450.0 MHz: CW, Phone, Image, MCW, RTTY/Data; 902.0-928.0 MHz: CW, Phone, Image, MCW, RTTY/Data; 1240-1300 MHz: CW, Phone, Image, MCW, RTTY/Data; 2300-2310 MHz; 2390-2450 MHz; 3300-3500 MHz; 5650-5925 MHz; 10.0-10.5 GHz; 24.0-24.25 GHz; 47.0-47.2 GHz; 76.0-81.9 GHz; 119.98-120.02 GHz; 142-149 GHz; 241-250 GHz; All above 300 GHz.

⁵ Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that “[t]he term ‘willful’, when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act or any rule or regulation of the Commission authorized by this Act....” See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

the commission or omission of such act more than once or for more than one day.⁶

8. Section 1.903(a) of the Act states that stations in the Wireless Radio Services must be used and operated only in accordance with the rules applicable to their particular service as set forth in this title and with a valid authorization granted by the Commission. On December 11, 2007, Torres operated radio transmitting equipment from his residence on 26.71 MHz. The license for station N3TX authorizes Jose Torres to operate on specific frequencies in the Amateur Radio Service Band, but does not authorize Jose Torres to operate 26.71 MHz. During a December 11, 2007, inspection the agents warned Torres that he must immediately cease operating on the frequency 26.71 MHz. Furthermore, in the January 7, 2008, Notice of Violation, the Philadelphia Office notified Torres that he was in violation of Section 1.903(a) of the Rules for operating on the unauthorized frequency. Notwithstanding these warnings, on April 17, 2008, and June 2, 2008, Commission agents determined that Torres operated radio transmitting equipment from his residence on the frequency 26.71 MHz. Because Torres operated his Amateur Radio station on an unauthorized frequency after being warned that he did not have authority to do so and because he admitted to such unauthorized operation, we find that the violation was willful. Because the violation occurred on more than one day, it was repeated.

9. Pursuant to *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, ("*Forfeiture Policy Statement*"), and Section 1.80 of the Rules, the base forfeiture amount for operating radio transmitting equipment on an unauthorized frequency is \$4,000.⁷ 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, and history of prior offenses, ability to pay, and other such matters as justice may require.⁸ Applying the *Forfeiture Policy Statement*, Section 1.80 of the Rules, and the statutory factors to the instant case, we conclude that Jose Torres is apparently liable for a (\$4,000) forfeiture.

10. Section 97.119(a) of the Commission's Rules states that each amateur station, except a space station or telecommand station, must transmit its assigned call sign on its transmitting channel at the end of each communication, and at least every 10 minutes during a communication, for the purpose of clearly making the source of the transmissions from the station known to those receiving the transmissions. On December 11, 2007, April 17, 2008, and June 2, 2008, agents from the Philadelphia Office observed that Torres did not transmit his call sign N3TX while operating his Amateur Radio station on the frequency 26.71 MHz. Based on the evidence before us, we admonish Jose Torres for willfully and repeatedly violating Section 97.119(a) of the Rules for failing to transmit a call sign.

IV. ORDERING CLAUSES

11. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.111, 0.311, 0.314 and 1.80 of the Commission's Rules, Jose Torres is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of four thousand dollars (\$4,000) for violation of Section 1.903(a) of the Act.⁹

12. **IT IS FURTHER ORDERED** that Jose Torres **IS ADMONISHED** for willfully and

⁶ Section 312(f)(2) of the Act, 47 U.S.C. § 312(f)(2), which also applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'repeated', when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day."

⁷ 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999); 47 C.F.R. §1.80.

⁸ 47 U.S.C. § 503(b)(2)(E).

⁹ 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.111, 0.311, 0.314, 1.80; 47 U.S.C. § 301.

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repeatedly violating Section 97.119(a) of the Commission's Rules.¹⁰

13. **IT IS FURTHER ORDERED** that, pursuant to Section 1.80 of the Commission's Rules within thirty days of the release date of this Notice of Apparent Liability for Forfeiture, Jose Torres **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

14. Payment of the forfeiture must be made by credit card through the Commission's Revenue and Receivables Operations Group at (202) 418-1995, or by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the Account Number and FRN Number referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment[s] by wire transfer may be made to ABA Number 021030004, receiving bank Federal Reserve Bank of New York, and account number 27000001. Requests for full payment under an installment plan should be sent to: Chief Financial Officer -- Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554.⁸ If you have questions, please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: ARINQUIRIES@fcc.gov. Jose Torres shall also send electronic notification on the date said payment is made to NER-Response@fcc.gov.

15. The response, if any, must be mailed to Federal Communications Commission, Enforcement Bureau, Northeast Region, Philadelphia Office, One Oxford Valley Building, Suite 404, 2300 East Lincoln Highway, Langhorne, Pennsylvania 19047 and must include the NAL/Acct. No. referenced in the caption. An electronic copy shall be sent to NER-Response@fcc.gov.

16. 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 ("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.

17. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture shall be sent by Certified Mail, Return Receipt Requested, and regular mail, to Jose Torres at his address of record.

FEDERAL COMMUNICATIONS COMMISSION

Gene Stanbro
District Director
Philadelphia Office
Northeast Region
Enforcement Bureau

¹⁰ 47 C.F.R. § 97.119(a).

⁸ See 47 C.F.R. § 1.1914.