

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

In the Matter of)	
)	
David E. Perka)	File Number: EB-07-CF-0119
)	
Annapolis, Maryland)	NAL/Acct. No.: 200932340001
)	
)	FRN: 0008202053

FORFEITURE ORDER

Adopted: September 20, 2011

Released: September 21, 2011

By the Regional Director, Northeast Region, Enforcement Bureau:

I. INTRODUCTION

1. In this Forfeiture Order (“*Order*”), we issue a monetary forfeiture in the amount of seventeen thousand dollars (\$17,000) to David Edward Perka (“Perka”), amateur radio licensee KA3PRB, for willfully and repeatedly violating section 301 of the Communications Act of 1934, as amended (“Act”),¹ by operating without a license in the Maritime Radio Service and willfully violating section 333 of the Act by maliciously interfering with the United States Coast Guard (“USCG”) on the International Distress, Safety, and Calling Channel in Annapolis, Maryland. In this *Order*, we consider Perka’s request that we cancel the forfeiture based on his inability to pay.

II. BACKGROUND

2. Agents in the FCC’s Columbia Office determined that, on April 6 and April 7, 2008, Perka operated on Marine Channel 16 (156.800 MHz), which is the International Distress, Safety, and Calling Channel for stations operating in the Maritime Radio Service. Although Perka holds an amateur license, he does not hold a license to operate in the Maritime Service. The unauthorized transmissions on April 6, 2008 consisted of Perka making threatening statements to the USCG. Perka later admitted to FCC agents that the transmissions on April 6, 2008 were intentionally transmitted to harass the USCG. The unauthorized transmissions on April 7, 2008 consisted of tones from a Dual-Tone Multi-Frequency (DTMF) keypad.

3. On March 27, 2009, the Columbia Office issued a Notice of Apparent Liability for Forfeiture (“*NAL*”) in the amount of \$17,000 to Perka for apparently willfully and repeatedly violating section 301 of the Act by operating without a license in the Maritime Radio Service and apparently willfully violating section 333 of the Act by maliciously interfering with the USCG on Marine Channel 16. In his response, Perka admits to the findings in the *NAL*, but requests a reduction based on his inability to pay.

III. DISCUSSION

4. The proposed forfeiture amount in this case was assessed in accordance with section 503(b) of the Act,² section 1.80 of the Rules,³ and the *Commission’s Forfeiture Policy Statement*.⁴ In

¹ 47 U.S.C. §§ 301, 333.

² 47 U.S.C. § 503(b).

examining Perka's response, section 503(b) of the Act requires that the Commission 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 other such matters as justice may require.⁵ We have considered Perka's response to the *NAL* in light of these statutory factors. Because Perka does not dispute any of the findings in the *NAL*, we find that he willfully and repeatedly violated section 301 of the Act and willfully violated section 333 of the Act. For the reasons discussed below, we decline to reduce the proposed forfeiture based on Perka's alleged inability to pay.

5. The Commission has determined that, in general, gross revenues are the best indicator of an ability to pay a forfeiture.⁶ The *NAL* specifically stated that a cancellation or reduction based on inability to pay will not be considered unless the petitioner provides (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.⁷ The only documentation Perka submitted was a single unemployment check from the State of Maryland dated April 6, 2009. Enforcement Bureau staff provided Perka an additional opportunity to submit documentation in support of his request for a reduction based on an inability to pay.⁸ Although we have evidence that Perka received the letter, we have not received a response. We therefore have no basis for assessing Perka's financial situation and find that a forfeiture in the amount of \$17,000 is warranted.⁹

IV. ORDERING CLAUSES

6. **ACCORDINGLY, IT IS ORDERED** that, pursuant to section 503(b) of the Communications Act of 1934, as amended ("Act"), and sections 0.111, 0.311 and 1.80(f)(4) of the Commission's Rules, David Edward Perka, **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of \$17,000 for willfully and repeatedly violating section 301 of the Act and willfully violating section 333 of the Act.¹⁰

7. Payment of the forfeiture shall be made in the manner provided for in section 1.80 of the Rules within 30 days of the release of this *Order*. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to section 504(a) of the

³ 47 C.F.R. § 1.80.

⁴ *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), *recon. denied*, 15 FCC Rcd 303 (1999) ("*Forfeiture Policy Statement*").

⁵ 47 U.S.C. § 503(b)(2)(E).

⁶ *See e.g., PJB Communications of Virginia, Inc.*, Memorandum Opinion and Order, 7 FCC Rcd 2088, 2089 (1992) (licensee's gross revenues are the best indicator of its ability to pay a forfeiture and use of gross revenues to determine a party's ability to pay is reasonable, appropriate, and a useful yardstick in helping to analyze a licensee's financial condition).

⁷ *NAL* at para. 18.

⁸ *See* Letter from Salomon Satche, District Director, Columbia Office, to David Perka, dated May 26, 2011.

⁹ *San Jose Navigation, Inc.*, Forfeiture Order, 22 FCC Rcd 1040, 1043 (2007) (in assessing an inability to pay claim, the Commission requires the claimant to provide reliable and objective documentation that reflects its current overall financial status).

¹⁰ 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4); 47 C.F.R. §§ 301, 333.

Act.¹¹ Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Account Number and FRN 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 by wire transfer may be made to ABA Number 021030004, receiving bank TREAS/NYC, and account number 27000001. For payment by credit card, an FCC Form 159 (Remittance Advice) must be submitted. When completing the FCC Form 159, enter the NAL/Account number in block number 23A (call sign/other ID), and enter the letters “FORF” in block number 24A (payment type code). 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. Please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: ARINQUIRIES@fcc.gov with any questions regarding payment procedures. David Perka shall also send electronic notification on the date said payment is made to NER-Response@fcc.gov

8. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by First Class Mail and Certified Mail Return Receipt Requested to David Perka at his address of record.

FEDERAL COMMUNICATIONS COMMISSION

G. Michael Moffitt
Regional Director, Northeast Region
Enforcement Bureau

¹¹ 47 U.S.C. § 504(a).