

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

In the Matter of)	
)	File No. EB-01-NY-490
Rev. Yvon Louis)	NAL/Acct. No. 200232380002
Brooklyn, New York)	FRN No. 0006-2631-72

MEMORANDUM OPINION AND ORDER

Adopted: September 3, 2004

Released: September 8, 2004

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this *Memorandum Opinion and Order* (“*Order*”), we deny the petition for reconsideration filed by Rev. Yvon Louis, Brooklyn, New York (“*Rev. Louis*”).¹ *Rev. Louis* seeks reconsideration of the *Forfeiture Order*² in which the Chief, Enforcement Bureau (“*Bureau*”) found him liable for a monetary forfeiture in the amount of ten thousand dollars (\$10,000) for willful and repeated violation of Section 301 of the Communications Act of 1934 (“*Act*”).³ The noted violation involves *Rev. Louis*’s operating radio transmitting equipment without a license.

2. On July 23, 2002, the Commission’s New York District Office (“*New York Office*”) issued a *Notice of Apparent Liability for Forfeiture* (“*NAL*”) to *Rev. Louis* for a forfeiture in the amount of ten thousand dollars (\$10,000).⁴ *Rev. Louis* filed a response to the *NAL* on July 30, 2002. On August 5, 2003, the *Bureau* issued the *Forfeiture Order*, which imposed a monetary forfeiture in the amount of \$10,000. *Rev. Louis* filed a response requesting cancellation of the forfeiture. For the reasons set forth below, we deny *Rev. Louis*’s request.

II. BACKGROUND

3. On November 16 and 17, 2001, *New York Office* agents observed an unauthorized radio broadcast on 93.7 MHz, and identified the source of the unauthorized transmissions as the Calvary Tabernacle, Inc., 1653 Nostrand Avenue, Brooklyn, NY, 11226. There was no evidence of a Commission authorization for this operation. On November 17, the agents requested and received permission from *Rev. Louis*, the pastor of Calvary Tabernacle, Inc., to inspect the radio station’s studio equipment. Also at that time the agents hand-delivered a Warning Letter to *Rev. Louis* for the operation of the unlicensed station. On November 23, 2001, the *New York Office* mailed *Rev. Louis* a Warning Letter, by First Class and Certified Mail Return Receipt Requested.

4. On December 5, 2001, the *New York Office* received a response from *Rev. Louis*

¹ Letter to the Chief, Enforcement Bureau from *Rev. Yvon Louis*, dated August 15, 2003.

² *Rev. Yvon Louis*, 18 FCC Rcd 16187 (Enf. Bur. 2003) (“*Forfeiture Order*”).

³ 47 U.S.C. § 301.

⁴ *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200232380002 (released July 23, 2002).

acknowledging and confirming the operation of a radio station at 1653 Nostrand Avenue, Brooklyn, NY, 11226. In his response, Rev. Louis claimed that the transmitter conformed to the standards of Part 15 of the Commission's Rules and that it did not exceed four watts.

5. On December 17, 2001, New York Office agents requested and were given permission by Rev. Louis to inspect the Calvary Tabernacle, Inc. radio station. In response to questions by the agents, Rev. Louis told the agents that he operated the station on weekends, first on 93.7 MHz, and later on 88.1 MHz. The agents explained to Rev. Louis that his transmitter was listed as a Part 73 transmitter and therefore that it required an FCC station license. The agents pointed out to Rev. Louis that the label on the back of his transmitter, and the information in the instruction manual, indicated that the transmitter was Part 73 and not Part 15 as Rev. Louis had stated in his letter. In addition, the New York agents explained to Rev. Louis that the measured field strength from his transmitter greatly exceeded the Part 15 power limits for non-licensed operation. The agents advised Rev. Louis of the penalties for operating without a license and ascertained that Rev. Louis had a copy of the Warning Letter dated November 23, 2001, in his possession.

6. On January 4, January 5, January 11, and January 18, 2002, Commission agents again observed radio broadcasts on 88.1 MHz, and identified the source of the unauthorized transmissions to the Calvary Tabernacle, Inc., 1653 Nostrand Avenue, Brooklyn, New York, 11226. Field strength measurements taken on January 5, 2002 and January 18, 2002 exceeded the field strength limits for non-licensed low-power Part 15 transmitters by 2,479 and 3,391 times respectively.⁵

7. On January 22, 2002 the New York Office received a letter from Rev. Louis in which he stated that during the December 17, 2001 inspection the agents found a one watt transmitter and informed him that the unlicensed operation of the transmitter violated Section 301 of the Act. Rev. Louis further states that the agents told him he could operate a low-power transmitter under Part 15 of the Rules.⁶ Based on the agents' statements, Rev. Louis asserts that he exchanged the one watt transmitter for one that complied with Part 15 of the Rules. Rev. Louis claims that the transmitter inspected by the agents on January 18, 2002 was the new Part 15-compliant transmitter.

8. On June 22, 2002, Commission agents again observed a radio broadcast on 88.1 MHz, and identified the source of the unauthorized transmissions to the Calvary Tabernacle, Inc., 1653 Nostrand Avenue, Brooklyn, New York, 11226. The agents made field strength measurements of the station's signal. The agents' measurements indicated that the field strength of the signal exceeded the permissible level for a non-licensed low-power transmitter by 847 times. The agents conducted a station inspection and determined that Rev. Louis was the person responsible for the station operation.

9. On July 23, 2002, the New York Office issued an *NAL* in the amount of \$10,000 to Rev. Louis for operating an unlicensed radio transmitter on frequencies 93.7 MHz, 88.1 MHz, and 90.1 MHz in willful and repeated violation of Section 301 of the Act. In his response to the *NAL*, Rev. Louis argued that he allowed a Commission agent to inspect the church on November 16, 2001, and that the Commission agent did not find a transmitter during that inspection. Rev. Louis alleges that he thereafter replaced the one watt transmitter with a Part 15 transmitter, after being informed by the agent that its operation would be permitted without a license, and that during a subsequent inspection, only a non-operating Part 15 transmitter was observed by the agent. Rev. Louis concludes that the Commission never found a "good functioning radio transmitter" at the church, and that he did not violate Section 301 of the Act.

⁵ Non-licensed broadcasting is permitted only if the field strength of the transmission does not exceed 250 $\mu\text{V}/\text{m}$ at three meters. The agent's measurements indicated that the station's field strength measurement extrapolated to three meters was 619,689 $\mu\text{V}/\text{m}$ on January 5, 2002, and 847,647 $\mu\text{V}/\text{m}$ on January 18, 2002.

⁶ 47 C.F.R. §§ 15.1 *et seq.* permits the use of certain non-licensed low-power transmitters.

10. On August 5, 2003, the Enforcement Bureau issued a *Forfeiture Order* to Rev. Louis assessing a ten thousand dollar (\$10,000) forfeiture on a finding that Rev. Louis willfully and repeatedly violated Section 301 of the Act.⁷ The *Forfeiture Order* rejected Rev. Louis's argument that no operable transmitting equipment was located at 1653 Nostrand Avenue, Brooklyn, New York 11226, and that his transmissions complied with Part 15 of the Rules after the December 17, 2001 inspection. The *Forfeiture Order* noted that New York Office agents identified an unauthorized radio broadcast at 1653 Nostrand Avenue, Brooklyn, New York 11226 on numerous occasions, and that the agents detected a measurable field strength signal on January 5, 2002, January 18, 2002 and June 22, 2002 that exceeded the permissible level for a non-licensed Part 15 transmitter by significant amounts.

11. In his response to the *Forfeiture Order*, Rev. Louis makes several arguments. First, Rev. Louis denies that his transmitter was illegal, insisting, as he did in the response to the *NAL*, that the transmitter was Part 15-compliant and that a New York Office agent had advised him that Part 15 transmitters are permitted without a license. Rev. Louis further denies that the transmissions detected by the New York Office agents outside the building were his, and that the agents never detected any illegal transmissions or found an illegal transmitter inside the building. In addition, Rev. Louis argues that Section 503(b) of the Act requires that the Commission take into account his religious organization's ability to serve its community and his freedom of speech. Finally, Rev. Louis argues that the forfeiture should be cancelled because his station is no longer broadcasting on the frequencies in question due to interference from another station.

III. DISCUSSION

12. Section 301 of the Act mandates 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 "except under and in accordance with this Act and with a license in that behalf granted under the provisions of this Act."⁸ Rev. Louis continues to argue, notwithstanding explanations by the New York Office agents and by the Warning Letters he received, that his operations were permitted under Part 15 of the Rules.

13. We conclude that contrary to his opinion, Rev. Louis did not meet the requirements of Part 15 for permissible broadcasting without a license. The New York Office agents examined Rev. Louis's transmitter in his presence and pointed out to him that it was a Part 73 transmitter. Moreover, the agents documented signal strength emanating from the Calvary Tabernacle, Inc., 1653 Nostrand Avenue, Brooklyn, New York, 11226, far in excess of that permitted under Part 15. The agents determined that Rev. Louis was responsible for these operations, and informed him of the violation.

14. Rev. Louis's argument that if he had a transmitter, and if it were illegal, that the Commission would have seized it, is without merit. Seizure of equipment is only one sanction of several that the Commission has at its disposal, and there is no requirement that field agents seize the transmitter to establish that it is in violation of the Commission's Rules. While Rev. Louis may not be familiar with the Act and the Rules, it is well established that ignorance of the Rules or Act is not a basis for determining that the violation is not willful.⁹ Accordingly, we conclude that Rev. Louis willfully and

⁷ *Notice of Apparent Liability, supra.*

⁸ 47 U.S.C. § 301.

⁹ *Southern California Broadcasting Company*, 6 FCC Rcd. 4387 (1991)(citing *Vernon Broadcasting, Inc.*, 60 RR2d 1275, 1277 (1986); *Fay Neel Eggleston*, 19 FCC2d 829 (1969)). See also *PBJ Communications of Virginia, Inc.*, 7 FCC Rcd 2088 (1992); *Standard Communications Corp.*, 1 FCC Rcd 358 (1986); *Triad Broadcasting Co., Inc.*, 96 FCC 2d 1235, 1242 (1984).

repeatedly violated Section 301 of the Act.¹⁰

15. We further conclude that no infringement of Rev. Louis's rights to practice his religion and exercise free speech exists here. Rev. Louis's rights to freedom of speech and freedom to practice his religion do not extend to transmitting communications by radio without a license. The statutory requirement to have a license does not infringe on the Constitutional rights of individuals who are unlicensed broadcasters.¹¹

16. Finally, that Rev. Louis is no longer operating his transmitter is not a basis for mitigation of the forfeiture. Cessation of the rule violation does not nullify or mitigate any prior forfeitures or violations.¹²

17. We have examined Rev. Louis's petition for reconsideration pursuant to the statutory factors set forth above, and in conjunction with the *Policy Statement* as well. As a result of our reconsideration, we conclude that Rev. Louis has failed to provide sufficient justification for any change in the *Forfeiture Order*.

IV. ORDERING CLAUSES

18. Accordingly, **IT IS ORDERED** that, pursuant to Section 405 of the Act,¹³ and Section 1.106 of the Rules,¹⁴ the petition for reconsideration of the *Forfeiture Order* **IS DENIED** and the issuance of the \$10,000 forfeiture **IS AFFIRMED**.

19. 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 Act.¹⁵ 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/Acct. No. and FRN No. referenced above. Payment by check or money order may be mailed to Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. Payment by overnight mail may be sent to Bank One/LB 73482, 525 West Monroe, 8th Floor Mailroom, Chicago, IL 60661. Payment by wire transfer may be made to ABA Number 071000013, receiving bank Bank One, and account number 1165259. Requests for full payment under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.¹⁶

¹⁰ In this context, "willful" means the conscious and deliberate commission or omission of an act, irrespective of any intent to violate statutory or regulatory requirements. A violation is considered "repeated" if it continues for more than one day. See 47 U.S.C. § 312(f); see also *Southern California Broadcasting Co.*, 6 FCC Rcd 4387, 4387-88, ¶ 5 (1991).

¹¹ *National Broadcasting Co. v. US*, 319 U.S. 190, 227 (1943) ("The right of free speech does not include... the right to use the facilities of radio without a license.") See also *Creation of Low Power Radio Service*, 15 FCC Rcd 2205, 2227 (2000).

¹² See *Radio Station KGVL, Inc.*, 42 FCC 2d 258, 259 (1973); and *Executive Broadcasting Corp.*, 3 FCC 2d 699, 700 (1966).

¹³ 47 U.S.C. § 405.

¹⁴ 47 C.F.R. § 1.106.

¹⁵ 47 U.S.C. § 504(a).

¹⁶ See 47 C.F.R. § 1.1914.

20. **IT IS FURTHER ORDERED THAT** this *Order* shall be sent by regular mail and by certified mail, return receipt requested, to Rev. Yvon Louis, Calvary Tabernacle, 1653 Nostrand Avenue, Brooklyn, New York, 11226.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon
Chief, Enforcement Bureau