

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

In the Matter of)	
)	
Fritzner Simon)	File No. EB-03-TP-091
1411 Foxboro Drive)	NAL/Acct. No. 200432700003
Brandon, Florida)	FRN 000432700003

FORFEITURE ORDER

Adopted: September 8, 2004

Released: September 10, 2004

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this *Forfeiture Order* (“*Order*”), we issue a monetary forfeiture in the amount of ten thousand dollars (\$10,000) to Mr. Fritzner Simon (“Mr. Simon”) for willful violation of Section 301 of the Communications Act of 1934, as amended (“Act”).¹ The noted violation involves Mr. Simon’s operation of a radio station on the frequency of 87.9 MHz without Commission authorization.

2. On December 11, 2003, the District Director of the Commission’s Tampa, Florida Field Office (“Tampa Office”) released a *Notice of Apparent Liability* (“NAL”)² proposing a forfeiture in the amount of \$10,000 for the noted violation. Mr. Simon filed a response to the NAL on January 5, 2004.

II. BACKGROUND

3. On March 5, 2003, agents from the Tampa Office determined that an FM radio station operating on 102.1 MHz was broadcasting from a building located at 1719 Columbus Drive, Tampa, Florida. The agents concluded on the basis of field strength measurements of the station’s signal that a Commission authorization was required to operate the radio station.³ A search of the Commission’s records showed that no license had been issued for the operation of an FM broadcast station at this location. That same day, the agents inspected the station and found an FM transmitter in operation. One of the persons present at the radio station identified himself with a photo identification as Mr. Fritzner Simon. Mr. Simon informed the agents that he operated the station with his brother. The agents issued written and verbal warnings for unlicensed operation to Mr. Simon, who voluntarily agreed to surrender an exciter and the radio transmitter to the agents.

4. On August 21, 2003, agents conducting routine monitoring of the FM broadcast band

¹ 47 U.S.C. § 301.

² *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200432700003 (Enf. Bur., Tampa Office, released December 11, 2003) (“NAL”).

³ Non-licensed broadcasting in the 88-108 MHz band is permitted only if the field strength of the transmissions does not exceed 250 microvolts per meter at three meters. See 47 C.F.R. § 15.239(b). In the instant case, measurements showed that the field strength of the signal exceeded the permissible level for a non-licensed low-power radio transmitter by 6,105 times.

observed a radio station operating on 87.9 MHz, and subsequently determined that the station was broadcasting from a room on the second floor of a residence located at 4206 Nebraska Avenue, Tampa Florida. Based on field strength measurements, the agents concluded that the station's signal exceeded any low-powered transmission allowed on any FM frequency.⁴ The agents also observed that the station operated continuously for over an hour, in contravention of the Commission's Rules.⁵ According to the Commission's records, there was no license covering the operation of an FM broadcast station at this location. Further, the agents determined that a vehicle in the driveway of the residence was registered to Mr. Simon and his brother. On September 10, 2003, the agents met with the owner of the residential property. After reviewing photographs of Mr. Simon, the property owner identified Mr. Simon as the person using the space at his residence.

5. On December 11, 2003, the Tampa Office issued an *NAL* to Mr. Fritzner Simon, finding that he willfully⁶ and repeatedly⁷ violated Section 301 of the Act by operating a radio station on the frequencies of 102.1 and 87.9 MHz without Commission authorization, and proposing a forfeiture in the amount of ten thousand dollars (\$10,000). In his response, Mr. Simon admits that he operated a radio station at 102.1 MHz without authorization on March 5, 2003. However, as detailed below, Mr. Simon claims that he has "no idea" about the unlicensed operation of a radio station at 87.9 MHz from a residence located at 4206 Nebraska Avenue on August 21, 2003. Mr. Simon admits that his vehicle was parked in the driveway of the residence on that date, but claims that his wife and "her friend" were using his vehicle that day.

III. DISCUSSION

6. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Communications Act of 1934, as amended ("Act"),⁸ Section 1.80 of the Rules,⁹ and *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999) ("*Forfeiture Policy Statement*"). In examining Mr. Simon'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

⁴FM broadcast operation on frequency 87.9 is limited for use only by licensed noncommercial educational FM broadcast stations that have been required by the Commission to change frequencies. *See* 47 C.F.R. § 73.501.

⁵Operation of a non-licensed, low-powered transmitter on frequency 87.9 MHz is restricted to *periodic operation*, which is generally used for the transmission of control signals, such as those used with alarm systems, garage door openers and remote switches. *See* 47 C.F.R. §§ 15.209, 15.231. Because operation on frequency 87.9 MHz must be limited in duration, continuous operation is not permitted.

⁶Section 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,' ... 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).

⁷As provided by 47 U.S.C. § 312(f)(2), a continuous violation is "repeated" if it continues for more than one day. The *Conference Report* for Section 312(f)(2) indicates that Congress intended to apply this definition to Section 503 of the Act as well as Section 312. *See* H.R. Rep. 97th Cong. 2d Sess. 51 (1982). *See Southern California Broadcasting Company*, 6 FCC Rcd 4387, 4388 (1991) and *Western Wireless Corporation*, 18 FCC Rcd 10319 at fn. 56 (2003).

⁸47 U.S.C. § 503(b).

⁹47 C.F.R. § 1.80.

such matters as justice may require.¹⁰

7. Section 301 of the Act prohibits radio operation “except under and in accordance with th[e] Act and with a license in that behalf granted under the provisions of th[e] Act.”¹¹ As noted above, Mr. Simon does not dispute that when Commission agents visited 1719 Columbus Drive on March 5, 2003, he was operating a radio station without Commission authorization. Based on Mr. Simon’s admission and the agents’ observations during the inspection, we conclude that Mr. Simon willfully violated Section 301 of the Act on March 5, 2003 by operating a radio station on the frequency of 102.1 MHz without a license.¹² We find no basis for cancellation or reduction of the proposed \$10,000 monetary forfeiture based on Mr. Simon’s response to the *NAL*.

IV. ORDERING CLAUSES

8. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Act, and Sections 0.111, 0.311 and 1.80(f)(4) of the Rules,¹³ Mr. Fritzner Simon **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of ten thousand dollars (\$10,000) for willfully violating Section 301 of the Act.

9. 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.¹⁴ Payment of the forfeiture may 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 FCC Registration Number (“FRN”) 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, Illinois 60661. Payment by wire transfer may be made to ABA Number 071000013, receiving bank “Bank One,” account number 1165259. Requests for full payment under an installment plan should be sent to: Chief, Revenue and Receivables Group, 445 12th Street, S.W., Washington, D.C. 20554.¹⁵

¹⁰47 U.S.C. § 503(b)(2)(D).

¹¹ 47 U.S.C. § 301.

¹² While the *NAL* also concluded that Mr. Simon’s violation was “repeated” based on an apparent unlicensed broadcast on August 21, 2003, we need not address that finding in light of the willful nature of Mr. Simon’s admitted March 5, 2003 violation. *See, e.g., Southern California Broadcasting Co.*, 6 FCC Rcd 4387, 4388 (1991) (in issuing a forfeiture pursuant to 47 U.S.C. § 503(b) of the Act, we are only required to find *either* a “willful” or “repeated” violation). A \$10,000 forfeiture is standard for a single instance of unauthorized broadcasting such as occurred on March 5, 2003. *See, e.g., Michael S. Selvanto*, DA 04-2488 (Enf. Bur., released August 10, 2004).

¹³47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4).

¹⁴47 U.S.C. § 504(a).

¹⁵*See* 47 C.F.R. § 1.1914.

10. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by First Class and Certified Mail Return Receipt Requested to Mr. Fritzner Simon, 1411 Foxboro Drive, Brandon, Florida, 33511.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon
Chief, Enforcement Bureau