

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

In the Matter of)	
)	File No. EB-03-NY-379
Angelo Avena)	
)	NAL/Acct. No. 200432380013
Linden, NJ)	
)	FRN: 0010373769
)	

FORFEITURE ORDER

Adopted: November 23, 2004

Released: November 24, 2004

By the Assistant Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this *Forfeiture Order* (“*Order*”), we issue a monetary forfeiture in the amount of one thousand dollars (\$1,000) to Angelo (“Angel”) Avena for operating an unlicensed radio transmitter on the frequency 87.9 MHz in Linden, New Jersey, in violation of Section 301 of the Communications Act of 1934, as amended (“Act”).¹

II. BACKGROUND

2. On November 7, 2003, the Commission’s New York Field Office (“New York Office”) received a complaint about an illegal broadcast station in Middlesex County, New Jersey, operating on the frequency 87.9 MHz.

3. On November 19, 2003, using a mobile direction-finding vehicle, an agent from the New York Office monitored the frequency 87.9 MHz in Linden, New Jersey and observed a broadcast on that frequency. The agent identified the source of the broadcast as an FM broadcast antenna on the roof of 18 East 17th Street, Linden, New Jersey 07306. The agent determined, based on field strength measurements taken on November 19, 2003, that a Commission authorization was required to operate the station.² The Commission’s database contained no evidence of a station authorized to operate on 87.9 MHz in Linden, New Jersey. On that same day, the agent spoke with Mr. Avena at 18 East 17th Street and Mr. Avena acknowledged operating the unlicensed station. The agent advised Mr. Avena that a license was required for operation of the station and the agent provided Mr. Avena a Warning Letter. A Warning Letter also was sent to Mr. Avena on November 19, 2003 by First Class Mail and Certified Mail, Return Receipt Requested.

4. The agent later observed the unauthorized broadcast on 87.9 MHz on November 20,

¹47 U.S.C. § 301.

²47 C.F.R. §15.239(b).

2003, January 6, 2004, and January 17, 2004. Each time, using mobile direction-finding equipment, the agent identified the source of the unauthorized broadcast as an FM broadcast antenna on the roof of 18 East 17th Street, Linden, New Jersey. During a station inspection that took place on November 20, 2003, Mr. Avena again acknowledged operating the unlicensed station. Mr. Avena also acknowledged operating radio-transmitting equipment on 87.9 MHz at 18 East 17th Street, Linden, New Jersey without a license in his response to the November 19, 2003 Warning Letter.

5. On May 26, 2004, the New York Office issued a *Notice of Apparent Liability for Forfeiture* (“NAL”) to Mr. Avena in the amount of ten thousand dollars (\$10,000).³ Mr. Avena filed a response to the NAL on June 18, 2004, admitting unlicensed operation of radio transmitting equipment on 87.9 MHz, but claiming that he does not have the financial means to pay the monetary forfeiture. Mr. Avena also claims that he ceased operating the station on December 20, 2004 and therefore takes issue with the findings in the NAL regarding the station’s operation on January 6, 2004 and January 17, 2004.

III. DISCUSSION

6. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Act,⁴ Section 1.80 of the Commission’s Rules (“Rules”),⁵ 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. Avena’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.⁶

7. Section 301 of the Act provides that “[n]o person shall use or operate any apparatus for the transmission of energy or communications or signals by radio. . . except under and in accordance with this Act and with a license in that behalf granted under the provisions of this Act.” Mr. Avena admits that he operated radio transmission equipment on 87.9 MHz from his residence at 18 East 17th Street, Linden, New Jersey without a valid authorization on November 19, 2004 and November 20, 2004. Contrary to Mr. Avena’s assertion in his response to the NAL, the evidence shows that an unauthorized radio station operated on 87.9 MHz from 18 East 17th Street in Linden, New Jersey, Mr. Avena’s residence, on January 6 and January 17, 2004. Using direction-finding equipment, an agent determined on January 6 and January 17 that the radio station broadcasting on 87.9 MHz was operated from 18 East 17th Street and, based on field strength measurements, the agent determined that a Commission authorization was required to operate the station.⁷ The Commission’s database contained no record of a station authorized

³*Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200432380013 (Enf. Bur., New York Office, released May 26, 2004).

⁴47 U.S.C. § 503(b).

⁵47 C.F.R. § 1.80.

⁶47 U.S.C. § 503(b)(2)(D).

⁷Section 15.239 of the Commission’s Rules, 47 C.F.R. § 15.239, provides that non-licensed broadcasting in the 88-108 MHz band is permitted only if the field strength of the transmission does not exceed 250 μ V/m at three meters. On January 6, 2004, the agent determined that the station exceeded the permissible level for a non-licensed station by 898 times. On January 17, 2004, the agent determined that the station exceeded the permissible level for a non-licensed station by 1,936 times.

to operate in Linden, New Jersey on 87.9 MHz. We find that Mr. Avena's violation of Section 301 of the Act was willful⁸ and repeated.⁹

8. Mr. Avena asserts that he does not have the financial means to pay the \$10,000 forfeiture proposed in the *NAL*. After reviewing the financial information provided by Mr. Avena, we conclude that the proposed forfeiture amount should be reduced to \$1,000.00.

IV. ORDERING CLAUSES

9. 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,¹⁰ Angelo Avena **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of one thousand dollars (\$1,000) for violation of Section 301 of the Act.

10. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within thirty (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.¹¹ Payment shall be made by mailing a check or similar instrument, payable to the order of the "Federal Communications Commission," to the Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment must include the FCC Registration Number (FRN) and the *NAL*/Acct. No. referenced in the caption. 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 Group, 445 12th Street, S.W., Washington, D.C. 20554.¹²

⁸Section 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).

⁹As 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).

¹⁰47 C.F.R. §§ 0.111, and 0.311.

¹¹ 47 U.S.C. § 504(a).

¹² See 47 C.F.R. § 1.1914.

11. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by First Class and Certified Mail Return Receipt Requested to Angelo Avena, 18 East 17th Street, Linden, New Jersey, 07306.

FEDERAL COMMUNICATIONS COMMISSION

George R. Dillon
Assistant Chief, Enforcement Bureau