

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

In the Matter of	)	
	)	
In the Matter of	)	File Number: EB-04-NY-086
Jean L. Senatus	)	NAL/Acct. No: 2005323800XX
Spring Valley, NY	)	FRN: 0010 9802 90
	)	

**FORFEITURE ORDER**

**Adopted: August 30, 2005**

**Released: September 1, 2005**

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 two thousand five hundred dollars (\$2,500) to Jean L. Senatus (“Mr. Senatus”) for willful and repeated violation of Section 301 of the Communications Act of 1934, as amended (“Act”).<sup>1</sup> The noted violation involves Mr. Senatus’s operation of a radio station on the frequency 96.1 MHz in Spring Valley, New York without a Commission license.

**II. BACKGROUND**

2. On April 2, 2004, the FCC New York Office received a complaint of interference from an FCC licensed radio station about an illegal broadcast station operating on the frequency 96.1 MHz in Spring Valley, New York. The licensed station operates on the frequency 96.3 MHz in New York, New York.

3. On April 7, 2004, a Commission agent, using a mobile direction-finding vehicle, monitored the frequency 96.1 MHz in Spring Valley, New York. The agent observed a radio broadcast on 96.1 MHz and identified the source of the transmissions as an FM broadcasting antenna on an office building at 52 South Main Street, Spring Valley, New York 10977. The agents took field strength measurements of the station’s signal and determined that the station required a license to operate.<sup>2</sup> The agent searched Commission databases and found no evidence of a Commission authorization for operation on 96.1 MHz in Spring Valley, New York.

4. On April 17, 2004, Commission agents, using a mobile direction-finding vehicle,

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<sup>1</sup>47 U.S.C. § 301.

<sup>2</sup>Section 15.239(b) of the Commission’s Rules, 47 C.F.R. § 15.239(b), provides that non-licensed broadcasting in the 88-108 MHz band is permitted only if the field strength of the transmissions does not exceed 250  $\mu$ V/m at three meters. Measurements showed that the field strength of the station’s signal exceeded the permissible level for a non-licensed low-power radio transmitter.

monitored the frequency 96.1 MHz in Spring Valley, New York. The agents again observed a radio station broadcasting on 96.1 MHz and determined that the station was operating from 52 South Main Street, Spring Valley, New York. The agents observed an FM broadcast antenna on the roof of the building, entered the building, and heard broadcasts on 96.1 MHz coming from behind one of the doors on the second floor.

5. The agents knocked on the door and were allowed entry into the office space where the radio station was in operation and a group of five men were present. The office space was empty except for the radio transmitting equipment. Agents observed studio equipment, an RF power amplifier, and an antenna cable going into an FM transmitter. In response to questions from the agents about the operation of the radio station, one of the men, who was identified from a driver's license as Jean L. Senatus, assumed responsibility for operation of the station. Mr. Senatus also stated that he did not know the name of the lessee of the office space.

6. On April 21, 2004, the New York Office sent a Warning Letter, by First Class Mail and Certified Mail, Return Receipt Requested, to Jean L. Senatus for unlicensed operation on the frequency 96.1 MHz. On April 29, 2004, the New York Office received a reply to the Warning Letter from Mr. Senatus. Mr. Senatus admitted to being present during the operation of the station. He stated, however, that he does not own the station and that he was not aware that a license was required to operate a radio station. Mr. Senatus further stated that station operations ceased immediately upon receipt of the warning letter from the FCC.

7. On May 3, 2004, a Commission agent spoke to the owner of 52 South Main Street, Spring Valley, New York, who identified Mr. Senatus as the lessee of the second floor office space inspected by the agents. The building owner told the agent that he was aware of the antenna on the roof of his building, but that he was told by Mr. Senatus that the antenna on the roof was for a low power FM radio station. The lease agreement between Jean L. Senatus and the owner of 52 South Main Street, Spring Valley, New York, provides that Mr. Senatus was to occupy the office space on the second floor to conduct his business as a producer of a television show.

8. On November 8, 2004, the New York Office issued a *Notice of Apparent Liability* to Mr. Senatus in the amount of ten thousand dollars (\$10,000). Mr. Senatus submitted a reply on November 29, 2004. In his reply, Mr. Senatus does not deny having worked at the station, but seeks a reduction in the forfeiture amount on the following grounds: (1) he was not solely responsible for the station's operations, but rather the station was controlled by a group of individuals; (2) there was no advertising on the station and no profits were earned by any of the individuals involved in the station's operation; (3) he did not understand the nature of his actions and did not act with malice; (4) he was not aware that the station did not have a license; (5) he ceased operating after the FCC agents inspected the station and provided him a warning letter; and (6) he is financially unable to pay the full forfeiture amount.

### III. DISCUSSION

9. The forfeiture amount proposed in this case was assessed in accordance with Section 503(b) of the Communications Act of 1934, as amended ("Act"),<sup>3</sup> Section 1.80 of the Rules,<sup>4</sup> and the

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<sup>3</sup>47 U.S.C. § 503(b).

<sup>4</sup>47 C.F.R. § 1.80.

*Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines.*<sup>5</sup> In assessing forfeitures, Section 503(b)(2)(D) of the Act requires that we 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 such other matters as justice may require.<sup>6</sup>

10. Section 301 of the Act states that no 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 the Act and with a license granted under the provisions of the Act. Agents determined that a radio station broadcasting on 96.1 MHz operated from 52 South Main Street in Spring Valley, New York on April 7, 2004 and April 17, 2004 without a license. When agents inspected the station during its operation on April 17, 2004, Mr. Senatus assumed responsibility for the station's operation. In addition, in response to the *Notice of Apparent Liability* issued on November 8, 2004, Mr. Senatus admits to having worked at the station. Thus, based on the evidence, we find that Mr. Senatus willfully<sup>7</sup> and repeatedly<sup>8</sup> violated Section 301 of the Act by operating a radio station without a license.

11. We decline to reduce the forfeiture amount based on Mr. Senatus's claims that he was not solely responsible for the station's operation and that the station operated on a not-for-profit basis. Section 301 of the Act provides that "no person shall use or operate" radio transmission equipment without a valid Commission authorization. The Act does not provide that a forfeiture can be assessed only where we are able to identify all individuals involved in the operation of an unlicensed station.<sup>9</sup> Further, the Act does not make a distinction between unlicensed operation on a for-profit basis and unlicensed operation on a not-for-profit basis. Thus, the fact that Mr. Senatus was not the only individual involved in the operation of the station and the fact that the station operated on a not-for-profit basis are irrelevant to whether Section 301 of the Act has been violated and therefore do not warrant a reduction in the forfeiture.

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<sup>5</sup>12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999) ("*Forfeiture Policy Statement*").

<sup>6</sup>47 U.S.C. § 503(b)(2)(D).

<sup>7</sup>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,' ... 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).

<sup>8</sup>As 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. 97<sup>th</sup> 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).

<sup>9</sup>We also note that, while Mr. Senatus may not have been solely responsible for operation of the unlicensed station, he appears to have been primarily responsible. First, he assumed responsibility for operation of the station during the station inspection on April 17, 2004. Second, he is the lessee on the lease agreement for the office space from which the station was operated.

12. We likewise decline to reduce the forfeiture based on Mr. Senatus's assertions that (1) he was unaware there was no license for the station, (2) he did not understand the nature of his actions, and (3) he did not act with malice. The Commission has consistently stated that ignorance of the law is not a mitigating factor.<sup>10</sup> Further, Section 312(f)(1) of the Act, 47 USC § 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 ...." Thus, even if Mr. Senatus did not intend to violate Section 301 of the Act and did not act with malice, he acted willfully for purposes of the Act by deliberately operating the station.

13. Finally, we decline to reduce the forfeiture based on the fact that Mr. Senatus ceased operations after the FCC agents inspected the station and provided him a warning letter. As the Commission consistently has stated, "corrective action taken to come into compliance with Commission rules or policy is expected, and does not nullify or mitigate any prior forfeitures or violations."<sup>11</sup>

14. We do find, however, that based on Mr. Senatus's demonstrated inability to pay, the proposed forfeiture amount should be reduced to \$2,500.

#### IV. ORDERING CLAUSES

15. 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,<sup>12</sup> Jean L. Senatus **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of two thousand five hundred dollars (\$2,500) for willful and repeated violation of Section 301 of the Act.

16. 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.<sup>13</sup> 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 Federal Communications Commission, P.O. Box 358340, Pittsburgh, PA 15251-8340. Payment by overnight mail may be sent to Mellon Bank /LB 358340, 500 Ross Street, Room 1540670, Pittsburgh, PA 15251. Payment by wire transfer may be made to ABA Number 043000261, receiving bank Mellon Bank, and account number 911-6106.

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

FEDERAL COMMUNICATIONS COMMISSION

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<sup>10</sup>*Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991), citing *Vernon Broadcasting, Inc.*, 60 RR 2d 1275, 1277 (1986) and *Fay Neel Eggleston*, 19 FCC 2d 829 (1969).

<sup>11</sup>*See Seawest Yacht Brokers*, 9 FCC Rcd 6099 (1994).

<sup>12</sup>47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4).

<sup>13</sup>47 U.S.C. § 504(a).

Russell Monie, Jr.  
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