

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

In the Matter of William Stephen Major Sacramento, California))))))	File Number: EB-04-SF-305 NAL/Acct. No. 200532960002 FRN 0013442173
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FORFEITURE ORDER

Adopted: June 27, 2006

Released: June 29, 2006

By the Regional Director, Western Region, 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 William Stephen Major (“Major”), for willful and repeated violation of Section 301 of the Communications Act of 1934, as amended (“Act”).¹ On June 29, 2005, the Enforcement Bureau’s San Francisco Office issued a *Notice of Apparent Liability for Forfeiture* (“NAL”) in the amount of \$10,000 to Major after determining that Major willfully and repeatedly operated an unlicensed radio transmitter on 96.5 MHz in Sacramento, California. In this *Order*, we consider arguments raised by 916 Radio, an organization, which Major is president of, claiming responsibility for the violations, concerning Major’s liability, 916 Radio’s authority to operate the station, and its inability to pay the forfeiture.

II. BACKGROUND

2. On December 21, 2004, the Commission’s San Francisco Office received information concerning an unauthorized broadcast station operating on 96.5 MHz in Sacramento, California. A review of the Commission’s databases revealed no authorization for KNOZ to operate on 96.5 MHz in Sacramento, California.²

3. On January 5, 2005, agents from the San Francisco Office while in Sacramento, California observed a station on 96.5 MHz identifying as “KNOZ LP 96.5.” The agents used mobile direction finding techniques to locate the broadcast transmissions to commercial office space at 2207 16th Street, Sacramento, California. The office entrance door had signage which read “MAJORSCREEN WORKS THE HOME OF KNOZ 96.5 FM...HTTP://WWW.THE916COM...” The agents took field strength measurements and determined that the signals being broadcast exceeded the limits for operation under Part 15 of the Commissions Rules (“Rules”)³ and therefore required a license. The agents knocked on the office door and were granted entry by an individual who subsequently identified himself as

¹ 47 U.S.C. § 301.

² According to Commission records, there is a pending application for a construction permit for a FM translator, filed by Eastern Sierra Broadcasting, for operation on 96.5 MHz in Sacramento, California. See File No. BNPFT-20030317KKK.

³ Section 15.239 of the Rules 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 µV/m at three meters. 47 C.F.R. § 15.239. On January 5, 2005, the measurements indicated that the signal was 1,894 times greater than the maximum permissible level for a non-licensed Part 15 transmitter.

William Major. Major offered his business card which indicated he was associated with “KNOZ 96.5 FM (916) Radio.” In response to the agents’ questions regarding the operation of the station, Major assumed responsibility for the station operation. Major could not produce a station license. Major stated that he would take the station off-the-air since he wanted to be in compliance so that he could apply for a low power FM station license. Major stated he had completed all associated paperwork and had been in contact with the Commission about the steps necessary to obtain a license. The agents served a Notice of Unlicensed Operation (“*Notice*”) on Major. The *Notice*, which Major signed to acknowledge receipt, stated that the unlicensed operation of the radio station must be discontinued immediately, that operation of radio transmitting equipment without a valid radio station authorization constituted a violation of Section 301 of the Act,⁴ and that failure to stop the operation could result in various penalties, including forfeiture of the equipment. Monitoring by the San Francisco agents revealed that the signal on 96.5 MHz temporarily went off the air but resumed later in the afternoon on January 5, 2005.

4. On January 12, 2005, an agent from the San Francisco Office again monitored and used mobile direction finding techniques to locate a broadcast transmission on 96.5 MHz emanating from the commercial office space at 2207 16th Street, Sacramento, California. The transmission was identifying as “KNOZ LP 96.5.” The agent made field strength measurements and determined that the signals being broadcast were essentially unchanged from the previous measurement. The measurements indicated that the station still exceeded the limits for operation under Part 15 of the Rules, and, therefore, still required a license.⁵ When the agent knocked on the office door, a male voice denied entry and the request for inspection because the owner was not present. The agent then left another Notice of Unlicensed Operation (“*Notice*”) at the office door. This *Notice* also stated that the unlicensed operation of the radio station must be discontinued immediately, that operation of radio transmitting equipment without a valid radio station authorization constituted a violation of Section 301, and that failure to stop the operation could result in various penalties, including forfeiture of the equipment. This *Notice* also informed Major that he was in violation of Section 303(n) of the Act⁶ for failing to allow the San Francisco agent to inspect the radio station. As the agent departed the area, he heard Major’s voice on 96.5 MHz announcing that the FCC was at the door and was trying to shut the station down.

5. On January 14, 2005, February 3, 2005, and March 15, 2005, agents from the San Francisco Office again monitored and used mobile direction finding techniques to locate broadcast transmissions on 96.5 MHz emanating from the commercial office space at 2207 16th Street, Sacramento, California. During each observation, the transmission was identifying as “KNOZ LP 96.5.” The agents made field strength measurements and determined that the signals being broadcast were essentially unchanged from the previous measurements.⁷ The measurements indicated that the station still exceeded the limits for operation under Part 15 of the Rules, and, therefore, still required a license.

6. On June 29, 2005, the Enforcement Bureau’s San Francisco Office issued a *NAL* in the amount of \$10,000 to Major.⁸ In the *NAL*, the San Francisco Office found that Major apparently willfully

⁴ 47 U.S.C. § 301.

⁵ The measurements made on January 12, 2005, indicated that the signal was 1,788 times greater than the maximum permissible level for a non-licensed Part 15 transmitter.

⁶ 47 U.S.C. § 303(n).

⁷ The measurements made on January 14, 2005, indicated that the signal was 1,850 times greater than the maximum permissible level for a non-licensed Part 15 transmitter. The measurements made on February 3, 2005, indicated that the signal was 1,614 times greater than the maximum permissible level and the measurements made on March 15, 2005, indicated that the signal was 1,322 times greater than the maximum permissible level.

⁸ *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200532960002 (Enf. Bur., Western Region, San Francisco Office, released June 29, 2005).

and repeatedly violated Section 301 of the Act by operating an unlicensed radio transmitter on 96.5 MHz in Sacramento, California. 916 Radio filed a response on behalf of Major on July 28, 2005 (“*Response*”). In its *Response*, 916 Radio essentially makes three claims: that it, and not Major, a volunteer employee, is responsible for the operation of the station; that it believed it had authority to operate until early January 2005 because it intended to file a low power FM application and was in compliance with the low power FM rules; and that the Commission’s licensing scheme for low power FM radio stations is “egregiously unconstitutional.” 916 Radio also states that it does not have the ability to pay the forfeiture and requests that the forfeiture be reduced or cancelled.

III. DISCUSSION

7. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Act,⁹ Section 1.80 of the Rules,¹⁰ and *The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*.¹¹ In examining the *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.¹²

8. Section 301 of the Act requires 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.¹³ Neither Major nor 916 Radio claim to have a Commission license to operate an FM broadcast station.

9. In the *Response*, 916 Radio argues that it, and not Major, is responsible for the unlicensed operation described in the *NAL*, and that Major is a volunteer employee of 916 Radio.¹⁴ Major, and not 916 Radio, is the subject of this forfeiture proceeding. During the inspection of the station on January 5, 2005, Major indicated to the San Francisco agents that he was responsible for the station. Major also demonstrated control of the station by taking the station off the air after the agents left that day, although monitoring by the agents revealed that the station resumed broadcasting later that afternoon. We have previously held that because Section 301 of the Act provides that “no person shall use or operate”¹⁵ radio transmission equipment, liability for unlicensed operation may be assigned to any individual taking part in the operation of the unlicensed station, regardless of who else may be responsible for the operation.¹⁶ Therefore, 916 Radio’s claim of responsibility does not shield Major from liability. Further, to the extent that 916 Radio is speaking on behalf of Major, we note that neither it nor Major supply any evidence to

⁹ 47 U.S.C. § 503(b).

¹⁰ 47 C.F.R. § 1.80.

¹¹ 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999).

¹² 47 U.S.C. § 503(b)(2)(D).

¹³ 47 U.S.C. § 301.

¹⁴ 916 Radio states that it is a non-profit corporation, incorporated in California. As part of the *Response*, 916 Radio includes letters and cards from supporters, some of which are addressed to both Major and “KNOZ.” We also note that on the low power FM application that 916 Radio attached to its *Response*, Major is listed as the president of 916 Radio.

¹⁵ 47 U.S.C. § 301.

¹⁶ *Jean L. Senatus*, Forfeiture Order, DA 05-2376, 2005 WL 2105321 (rel. September 1, 2005). 916 Radio readily admits that it does not hold a Commission license and that it is responsible for the transmissions on 96.5 MHz. Therefore, nothing in this current forfeiture proceeding bars us from taking future enforcement action against 916 Radio if the unlicensed operation continues.

refute the facts described in the *NAL*.¹⁷

10. 916 Radio also argues that it believed it had authority to operate until early January 2005 because it intended to file a low power FM application and was in compliance with the low power FM rules. 916 Radio states that it filed an application for a low power FM license and request for waiver of “any and all [] rules that would prohibit the processing of said license” with the Commission on March 17, 2005, but never received a response. The last window for filing applications for low power FM licenses in California closed on June 8, 2000.¹⁸ Section 73.817 of the Rules specifically states that “[a]pplications submitted after the deadline will be dismissed with prejudice as untimely.”¹⁹ Neither Major nor 916 Radio provide any evidence showing that the application and request for waiver, filed almost five years after the last relevant low power FM filing window closed, were ever received by the Commission. 916 Radio further states, in both the *Response* and the purported March 17, 2005 waiver request, that it was told by Commission staff that it could continue to operate its station as long as it complied with all FCC Rules while waiting for a filing window to open to apply for a license.²⁰ The Commission has consistently held that applicants are responsible for compliance with the Commission’s Rules and that they should not rely on informal oral opinions from Commission staff.²¹ Additionally, Major received two *Notices*, as detailed above, warning him that his operation on 96.5 MHz violated Section 301 of the Act, and 916 Radio acknowledges that the operations on 96.5 MHz since late January 2005 have been “outside the FCC’s interpretations of FCC Rules and Federal Law.”²² Consequently, we find that none of 916 Radio’s efforts to obtain a low power FM license negate nor warrant reduction of Major’s liability for operating a radio station without a Commission license.

11. 916 Radio also alleges that the Commission’s licensing scheme for low power FM radio stations is “egregiously unconstitutional.” We note that to the extent the constitutionality of the low power FM licensing scheme²³ has been challenged, it has been found to be constitutional.²⁴

12. 916 Radio also states that it is a non-profit corporation with no ability to pay the proposed forfeiture. Again, we note that this forfeiture is proposed against Major, not 916 Radio. In the *NAL*, the San Francisco Office instructed Major, if he sought cancellation or reduction of the forfeiture, to supply:

¹⁷ In response to a Notice of Apparent Liability, the “respondent will be afforded a reasonable period of time (usually 30 days from the date of the notice) to show, in writing, why a forfeiture penalty should not be imposed or should be reduced, or to pay the forfeiture. Any showing as to why the forfeiture should not be imposed or should be reduced shall include a detailed factual statement and such documentation and affidavits as may be pertinent.” Section 1.80(f)(3) of the Rules. 47 C.F.R. § 1.80(f)(3).

¹⁸ *Public Notice: Low Power FM Filing Window Deadline Extended*, 15 FCC Rcd 9533 (2000).

¹⁹ 47 C.F.R. § 73.870(b). Waivers will only be granted for “good cause shown.” 47 C.F.R. § 1.3.

²⁰ We note that 916 Radio, by continuing to operate an unlicensed station, after receiving warnings from the San Francisco Office, was not in compliance with the Commission’s Rules when it filed the March 17, 2005 waiver request and application. See 47 C.F.R. § 73.854 (“No application for an LPFM station may be granted unless the applicant certifies, under penalty of perjury, that neither the applicant, nor any party to the application, has engaged in any manner including individually or with persons, groups, organizations or other entities, in the unlicensed operation of any station in violation of Section 301 of the Communications Act of 1934, as amended, 47 U.S.C. 301.”)

²¹ *Texas Media Group, Inc.* 5 FCC Rcd 2851, 2852 (1990) *aff’d sub nom Malkan FM Associates v. FCC*, 935 F.2d 1313 (D.C. Cir. 1991).

²² *Response* at 11.

²³ 47 C.F.R. § 73.801 *et seq.*

²⁴ See, e.g., *Ruggiero v. FCC*, 317 F.3d 239 (D.C. Cir 2003).

(1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices ("GAAP"); or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.²⁵

Major submitted no documentation that reflects his current financial status. Therefore, he has provided us with no basis to support cancellation or reduction of the forfeiture based on his inability to pay.²⁶

13. Finally, we note that neither Major nor 916 Radio have made any effort since the issuance of the *NAL* to cease operations on 96.5 MHz in Sacramento, California. Despite 916 Radio's statement that it "recogniz[es] it must leave the airwaves until properly licensed,"²⁷ further investigation by the San Francisco Office reveals that "KNOZ" continues to broadcast on 96.5 MHz in Sacramento.²⁸

14. We have examined the *Response* to the *NAL* pursuant to the statutory factors above, and in conjunction with the *Forfeiture Policy Statement*. As a result of our review, we conclude that Major willfully and repeatedly violated Section 301 of the Act. Considering the entire record and the factors listed above, we find that neither reduction nor cancellation of the proposed \$10,000 forfeiture is warranted.

IV. ORDERING CLAUSES

15. **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, William Stephen Major **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of \$10,000 for willfully and repeatedly violating Section 301 of the Act.²⁹

16. 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.³⁰ 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. Requests for full payment under an installment plan should be sent to: Associate Managing Director – Financial Operations, Room 1A625, 445 12th Street, S.W., Washington, D.C. 20554.³¹

²⁵ *NAL* at ¶ 13.

²⁶ See *Webnet Communications, Inc.*, 18 FCC Rcd 6870, 6878 ¶ 16 (2003).

²⁷ *Response* at 11.

²⁸ San Francisco agents monitored the station's continued illegal operation in Sacramento on February 16, 2006, and confirmed their findings by visiting the station's website: <http://www.the916.com> (visited June 25, 2006).

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

³⁰ 47 U.S.C. § 504(a).

³¹ See 47 C.F.R. § 1.1914.

17. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by First Class Mail and Certified Mail Return Receipt Requested to William Stephen Major at his address of record, and his counsel of record, Stephen C. Sanders, Esquire, and Robert Monterrosa, Esquire.

FEDERAL COMMUNICATIONS COMMISSION

Rebecca L. Dorch
Regional Director, Western Region
Enforcement Bureau