

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

In the Matter of  Jose A. Mollinedo  Victorville, CA	) ) ) ) ) ) )	File Number: EB-04-LA-072  NAL/Acct. No. 200532900004  FRN 0012227534
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**FORFEITURE ORDER**

**Adopted: January 11, 2006**

**Released: January 13, 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 Jose A. Mollinedo (“Mollinedo”), for willful and repeated violation of Section 301 of the Communications Act of 1934, as amended (“Act”).<sup>1</sup> On January 31, 2005, the Enforcement Bureau’s Los Angeles Office issued a *Notice of Apparent Liability for Forfeiture* (“NAL”) in the amount of \$10,000 to Mollinedo for operating an unlicensed radio transmitter on 90.9 MHz in Victorville, California.<sup>2</sup> In this *Order*, we consider Mollinedo’s arguments that he received bad advice from an associate regarding the need for a license to operate, and that since he received the *NAL*, he no longer operates the radio equipment and has destroyed it.

**II. BACKGROUND**

2. On March 8, 2004, the Enforcement Bureau’s Los Angeles Office received information concerning an unauthorized broadcast station operating on 90.9 MHz in Victorville, California. That same day, agents from the Los Angeles office used mobile direction finding techniques to locate broadcast transmissions on 90.9 MHz emanating from a private residence at 12650 Cobalt Road, in Victorville, California. The agents took field strength measurements and determined that the signals being broadcast exceeded the limits for operation under Part 15 of the Commission’s Rules (“Rules”)<sup>3</sup> and therefore required a license. When agents knocked at the residence door, they received no answer. The agents left a Notice of Unauthorized Operation (“Notice”) at the door of the residence.

3. On March 12, 2004, Los Angeles agents monitored 90.9 MHz in the Victorville, California area and used mobile direction finding techniques to locate broadcast transmissions on 90.9 MHz emanating from the private residence at 12650 Cobalt Road, in Victorville, California. The agents approached the house and identified themselves to the owner of the residence, Jose A. Mollinedo. The

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<sup>1</sup> 47 U.S.C. § 301.

<sup>2</sup> *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200532900004 (Enf. Bur., Western Region, Los Angeles Office, released January 31, 2005).

<sup>3</sup> 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  $\mu$ V/m at three meters. 47 C.F.R. § 15.239. On March 8, 2004, the measurements indicated that the signal was 4900 times greater than the maximum permissible level for a non-licensed Part 15 transmitter.

agents then requested an inspection. Mollinedo allowed the inspection and admitted ownership and operation of the station. He also acknowledged receiving the Notice that the agents had left at the residence four days earlier.<sup>4</sup>

4. On March 30, 2004, the Los Angeles Office sent Mollinedo a detailed Notice of Unlicensed Operation, which gave Mollinedo an opportunity to reply. The Los Angeles Office received a receipt from the Post Office indicating that the Notice of Unlicensed Operation had been received, but no reply was received. In May and June of 2004, Los Angeles agents monitored 90.9 MHz in the Victorville, California area on several occasions and found that the station was not broadcasting.

5. In June and July of 2004, the Los Angeles Office received information that an unauthorized radio station on 90.9 MHz in Victorville, California had resumed broadcasting. On September 20, 2004, agents from the Los Angeles Office again monitored and used mobile direction finding techniques to locate broadcast transmissions on 90.9 MHz emanating from the private residence at 12650 Cobalt Road, in Victorville, California. The agents made field strength measurements and determined that the signals being broadcast were essentially unchanged from their previous measurements. The measurements indicated that the station still exceeded the limits for operation under Part 15 of the Rules and, therefore, still required a license.<sup>5</sup> When agents knocked at the residence door, they received no answer.

6. On September 27, 2004, the Los Angeles Office sent Mollinedo another Notice of Unlicensed Operation, which again gave Mollinedo an opportunity to reply. The copy of the Notice sent via Certified Mail was returned by the Post Office after multiple delivery attempts. The copy of the Notice sent via regular mail was not returned. No reply was received. On November 26, 2004, agents reviewed the Commission's records and found that no authorization had been issued for any station to operate on 90.9 MHz in Victorville, California.

7. On January 31, 2005, the Los Angeles Office issued a *NAL* in the amount of \$10,000 to Mollinedo, finding that Mollinedo apparently willfully and repeatedly operated an unlicensed radio transmitter on 90.9 MHz in Victorville, California. Mollinedo filed a response to the *NAL* on March 16, 2005 ("*Response*"). In his *Response*, Mollinedo states that he received bad advice from an associate regarding the need for a license to operate and that since he received the *NAL*, he no longer operates the radio equipment and has destroyed it.

### III. DISCUSSION

8. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Act,<sup>6</sup> Section 1.80 of the Rules,<sup>7</sup> and *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*.<sup>8</sup> In examining Mollinedo'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

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<sup>4</sup> The Los Angeles agents issued another Notice of Unlicensed Operation to Mollinedo immediately after the inspection on March 12, 2004. Mollinedo signed the Notice to acknowledge receipt.

<sup>5</sup> The measurements made on September 20, 2004, indicated that the signal was 5000 times greater than the maximum permissible level for a non-licensed Part 15 transmitter.

<sup>6</sup> 47 U.S.C. § 503(b).

<sup>7</sup> 47 C.F.R. § 1.80.

<sup>8</sup> 12 FCC Rcd 17087 (1997), recon. denied, 15 FCC Rcd 303 (1999).

culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.<sup>9</sup>

9. 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. Mollinedo does not deny operating radio transmitting equipment without a license, nor does he deny that he received at least one of the Los Angeles Office Notices prior to receiving the *NAL*. Instead, Mollinedo argues that after receiving the Notice, an associate told him that he apparently did not need a license if he only played music but did not play advertisements. The advice Mollinedo received from an associate is irrelevant here. Mollinedo was warned orally and in writing by Los Angeles agents in March, 2004 that he needed a license and to discontinue operation of his radio transmitting equipment, yet, despite these warnings, Mollinedo resumed operation of his radio transmitting equipment without Commission authorization in September, 2004. Mollinedo also states that since he received the *NAL*, he no longer broadcasts and has destroyed his radio transmitting equipment. Consistent with Commission precedent, we find that Mollinedo's assertion that, since receipt of the *NAL*, he no longer broadcasts and has destroyed his equipment does not provide a basis for reduction or cancellation of the forfeiture.<sup>10</sup>

10. We have examined Mollinedo's 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 Jose A. Mollinedo 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

11. **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, Jose A. Mollinedo **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of \$10,000 for willfully and repeatedly violating Section 301 of the Act.<sup>11</sup>

12. 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.<sup>12</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. 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.<sup>13</sup>

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<sup>9</sup> 47 U.S.C. § 503(b)(2)(D).

<sup>10</sup> See, e.g., *Rony Richard Louis*, 19 FCC Rcd 23629 (EB 2004); *Seawest Yacht Brokers*, 9 FCC Rcd 6099 (1994).

<sup>11</sup> 47 U.S.C. §§ 301, 503(b), 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4).

<sup>12</sup> 47 U.S.C. § 504(a).

<sup>13</sup> See 47 C.F.R. § 1.1914.

13. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by First Class Mail and Certified Mail Return Receipt Requested to Jose A. Mollinedo at his address of record.

**FEDERAL COMMUNICATIONS COMMISSION**

Rebecca L. Dorch  
Regional Director, Western Region  
Enforcement Bureau