

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

In the Matter of

Oreste Abreu

Gurabo, Puerto Rico

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File Number: EB-06-SJ-036

NAL/Acct. No. 200732680003

FRN: 0015726433

FORFEITURE ORDER

Adopted: January 24, 2007**Released:** January 26, 2007

By the Regional Director, South Central Region, Enforcement Bureau:

I. INTRODUCTION

1. In this *Forfeiture Order* (“*Order*”), we issue a monetary forfeiture in the amount of five hundred dollars (\$500) to Oreste Abreu for willful and repeated violation of Section 301 of the Commission’s Act of 1934, as amended (“*Act*”).¹ The noted violation involves Mr. Abreu’s operation of an unlicensed radio transmitter.

II. BACKGROUND

2. On September 8, 2006, while in the Gurabo area for other investigative work, agents from the Commission’s San Juan Office of the Enforcement Bureau (“*San Juan Office*”) monitored radio broadcast transmissions on 91.7 MHz from over 10 miles from the signals’ source. A search of the Commission’s databases revealed no authorization for a broadcast station on that frequency in that area. An agent, using direction finding techniques, located the source of the transmissions to a building located at 189 Andres Arus Street, Gurabo, Puerto Rico. The building had a banner identifying the station as Radio Uncion y Fuego. The agent inspected the station and found a Ramsey FM transmitter in use. Based on the agent’s experience with this equipment and the distance that the signal was heard, the agent concluded that the signals being broadcast exceeded the limits for operation under Part 15 of the Commission’s Rules (“*Rules*”),² and, therefore, required a license. The operator of the station admitted to owning the station but refused to identify him self. He was later identified as Oreste Abreu. Mr. Abreu could not produce a license to operate the transmitter. The agent informed him that his actions violated the *Act* and the *Rules*, and he ceased operations.

3. On September 14 and 21, 2006, agents from the San Juan Office monitored broadcast transmissions on 91.7 MHz in Gurabo, Puerto Rico. On both days, the agents, using direction finding techniques, located the source of the transmissions to the same building where the transmissions on 91.7 MHz emanated on September 8, 2006. The agents took field strength measurements of the transmissions and determined that the signals being broadcast exceeded the limits for operation under Part 15 of the

¹ 47 U.S.C. § 301.

² 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. Devices compliant with Part 15 typically have a range of less than one mile.

Rules and therefore required a license.³ The agents searched Commission databases and found no evidence of a Commission authorization for operation of a station on 91.7 MHz in Gurabo, Puerto Rico.

4. On November 15, 2006, the San Juan Office issued a *Notice of Apparent Liability for Forfeiture* to Mr. Abreu in the amount of ten thousand dollars (\$10,000) for the apparent willful and repeated violation of Section 301 of the Act.⁴ Mr. Abreu submitted a response to the *NAL* requesting a reduction or cancellation of the proposed forfeiture based on his inability to pay.

III. DISCUSSION

5. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Act,⁵ Section 1.80 of the Rules,⁶ 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. Abreu'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.⁷

6. 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. In particular, Section 301 states that "[n]o person shall use or operate any apparatus for the transmission of energy or communications or signals by radio (a) from one place in any State, Territory, or possession of the United States or in the District of Columbia to another place in the same State, Territory, possession, or District; . . . except under and in accordance with this chapter and with a license in that behalf granted under the provisions of this chapter."⁸ On September 8, 14, and 21, 2006, Mr. Abreu operated an unlicensed radio station on 91.7 MHz from a building on Andres Arus Street in Gurabo, Puerto Rico. On September 8, 2006, Mr. Abreu admitted owning and operating the radio station. On September 8, 2006, Mr. Abreu was warned orally that operation of a radio station without a license violates the Rules and the Act and should cease. Mr. Abreu ceased operations at the end of the inspection on September 8, 2006, but resumed operations by September 14, 2006. Mr. Abreu does not deny any of the facts set forth in the *NAL*. Thus, based on the evidence, we find that Mr. Abreu willfully⁹ and repeatedly¹⁰ violated Section 301 of the Act by operating a radio transmitter without the required authorization from the Commission.

³ The measurements taken on September 14, 2006 indicated that the signal was 60 times greater than the maximum permissible level for a non-licensed Part 15 transmitter. The measurements taken on September 21, 2006 indicated that the signal was 368 times greater than the maximum permissible level for a non-licensed Part 15 transmitter.

⁴ *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200732680003 (Enf. Bur., San Juan Office, November 15, 2006) ("*NAL*").

⁵ 47 U.S.C. § 503(b).

⁶ 47 C.F.R. § 1.80.

⁷ 47 U.S.C. § 503(b)(2)(D).

⁸ 47 U.S.C. § 301.

⁹ 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).

¹⁰ The term "repeated," when used with reference to the commission or omission of any act, "means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day." 47 U.S.C. § 312(f)(2).

7. In his response to the *NAL*, Mr. Abreu asserts that a \$10,000 forfeiture would produce a financial hardship and requests that the forfeiture be cancelled or significantly reduced. The Commission has determined that, in general, an entity's gross revenues are the best indicator of its ability to pay a forfeiture.¹¹ After reviewing Mr. Abreu's financial documentation, we conclude that a reduction of the forfeiture to \$500 would be appropriate.

8. We have examined Mr. Abreu'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 Mr. Abreu willfully and repeatedly violated Section 301 of the Act. Although cancellation of the proposed monetary forfeiture is not warranted, reduction of the forfeiture amount to \$500 is appropriate based on Mr. Abreu's demonstrated inability to pay.

IV. ORDERING CLAUSES

9. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.111, 0.311 and 1.80(f)(4) of the Commission's Rules, Oreste Abreu **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of five hundred dollars (\$500) for violation of Section 301 of the Act.¹²

10. 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.¹³ 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, 445 12th Street, S.W., Room 1A625, Washington, D.C. 20554.¹⁴

¹¹ See *PJB Communications of Virginia, Inc.*, 7 FCC Rcd 2088, 2089 (1992) (forfeiture not deemed excessive where it represented approximately 2.02 percent of the violator's gross revenues); *Local Long Distance, Inc.*, 16 FCC Rcd 24385 (2000) (forfeiture not deemed excessive where it represented approximately 7.9 percent of the violator's gross revenues); *Hoosier Broadcasting Corporation*, 15 FCC Rcd 8640 (2002) (forfeiture not deemed excessive where it represented approximately 7.6 percent of the violator's gross revenues).

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

¹³ 47 U.S.C. § 504(a).

¹⁴ 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 Oreste Abreu at his address of record.

FEDERAL COMMUNICATIONS COMMISSION

Dennis P. Carlton
Regional Director, South Central Region
Enforcement Bureau