

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

In the Matter of)

Dwayne Simon)

Lancaster, California)

File Number: EB-06-LA-328

NAL/Acct. No.: 200732900011

FRN: 0016502197

FORFEITURE ORDER

Adopted: March 19, 2008**Released: March 21, 2008**

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 one hundred dollars (\$100) to Dwayne Simon, (“*Simon*”), for apparent willful and repeated violation of Section 301 of the Communications Act of 1934, as amended (“*Act*”).¹ On June 18, 2007, the Enforcement Bureau’s Los Angeles Office issued a Notice of Apparent Liability for Forfeiture (“*NAL*”) in the amount of \$10,000 to Simon for operating an unlicensed radio transmitter on 95.9 MHz in Lancaster, California. In this *Order*, we consider Simon’s argument that he is unable to pay the forfeiture amount proposed.

II. BACKGROUND

2. On December 30, 2006, agents from the Enforcement Bureau’s Los Angeles office used direction finding techniques to locate unidentified broadcast transmissions on 95.9 MHz emanating from Simon’s residence in Lancaster, 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*”) and therefore required a license.² According to FCC records, neither Simon, nor any other person or entity, holds an authorization to broadcast on that frequency from that location. The Los Angeles agents interviewed Simon and inspected the station that same night. During the interview Simon acknowledged to the agents that he was aware of the Commission’s requirement for a license to broadcast. Simon also acknowledged he was also aware of the Commission’s enforcement efforts against other pirate broadcasters in the Lancaster, California area. The agents issued an on-scene Notice of Unlicensed Operation to Simon that advised him that his station was unlicensed and that unlicensed operations could result in severe penalties including civil forfeitures, a criminal fine and/or one year imprisonment. At the end of the interview Simon told the agents that he would not operate the station again and indicated that he would pursue an Internet-based radio station as an alternative.

3. On January 24, 2007, the Commission’s Los Angeles office sent a formal Notice of

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 μ V/m at three meters. 47 C.F.R. § 15.239. The measurements made on December 30, 2006, indicated that the signal was 607 times greater than the maximum permissible level for a non-licensed Part 15 transmitter.

Unlicensed Operation (“Notice”) to Simon, which again warned that unlicensed operations could subject the operator to severe penalties. Simon did not respond to this Notice.

4. On April 6, 2007, Los Angeles agents again used direction finding techniques to locate transmissions on 95.9 MHz emanating from Simon’s residence in Lancaster, California. The agents again took field strength measurements and determined that the signals being broadcast exceeded the limits for operation under Part 15 of the Rules and therefore required a license.³ The Los Angeles agents interviewed Simon again and inspected his station. Simon again acknowledged operating the unlicensed station on 95.9 MHz

5. On June 18, 2007, the Los Angeles Office issued a *NAL* in the amount of \$10,000 to Simon.⁴ In the *NAL*, the Los Angeles Office found that Simon apparently willfully and repeatedly violated Section 301 of the Act by operating radio transmission apparatus without a license on 95.9 MHz. Simon filed a response (“*Response*”) to the *NAL* on July 19, 2007, and supplemented his response on March 7, 2008. In his *Response*, Simon states that he is unable to pay the proposed forfeiture amount.

III. DISCUSSION

6. 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*.⁷ 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.⁸

7. 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. On December 30, 2006, and April 6, 2007, Simon operated radio transmitting equipment at his residence in Lancaster, California, on 95.9 MHz without the required Commission authorization.

8. In his *Response*, Simon does not dispute the facts recited in the *NAL* and apologizes for his actions. He states that he has dismantled his transmitter system. He also asserts an inability to pay the forfeiture and supplies personal financial information to support this claim. In analyzing a financial hardship claim, the Commission generally has looked to gross revenues as a reasonable and appropriate yardstick in determining whether a licensee is able to pay the assessed forfeiture.⁹ While we find that

³ The measurements made on April 6, 2007, indicated that the signal was 1938 times greater than the maximum permissible level for a non-licensed Part 15 transmitter.

⁴ *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200732900011 (Enf. Bur., Western Region, Los Angeles Office, released June 18, 2007).

⁵ 47 U.S.C. § 503(b).

⁶ 47 C.F.R. § 1.80.

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

⁸ 47 U.S.C. § 503(b)(2)(E).

⁹ *See PLB Communications of Virginia, Inc.*, 7 FCC Rcd 2088 (1992).

Simon willfully and repeatedly violated Section 301 of the Act, based upon his inability to pay, we conclude that pursuant to Section 503(b) of the Act and the *Forfeiture Policy Statement*, reduction of the \$10,000 forfeiture to \$100 is warranted.¹⁰

IV. ORDERING CLAUSES

9. **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, Dwayne Simon, **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of \$100 for willfully and repeatedly violating Section 301 of the Act.¹¹

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.¹² 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/Account Number and FRN Number referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank TREAS/NYC, and account number 27000001. For payment by credit card, an FCC Form 159 (Remittance Advice) must be submitted. When completing the FCC Form 159, enter the NAL/Account number in block number 23A (call sign/other ID), and enter the letters “FORF” in block number 24A (payment type code). Requests for full payment under an installment plan should be sent to: Chief Financial Officer -- Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554. Please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: ARINQUIRIES@fcc.gov with any questions regarding payment procedures.

11. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by First Class Mail and Certified Mail Return Receipt Requested to Dwayne Simon, at his address of record.

FEDERAL COMMUNICATIONS COMMISSION

Rebecca L. Dorch
Regional Director, Western Region
Enforcement Bureau

¹⁰ See *PJB Communications*, 7 FCC Rcd at 2089 (forfeiture not deemed excessive where it represented approximately 2.02 percent of the violator’s gross revenues).

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

¹² 47 U.S.C. § 504(a).