

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

In the Matter of)
Roubens Maignan) File Number: EB-06-TP-336
Port St. Lucie, Florida) NAL/Acct. No. 200832700007
) FRN: 0017228925
)

FORFEITURE ORDER

Adopted: April 2, 2008

Released: April 4, 2008

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 one thousand five hundred dollars (\$1,500) to Roubens Maignan for willful and repeated violation of Section 301 of the Communications Act of 1934, as amended (“*Act*”).¹ The noted violations involve Mr. Maignan’s operation of an unlicensed radio transmitter.

II. BACKGROUND

2. In response to a complaint of unauthorized broadcast station in the Port St. Lucie, Florida area, on January 22 and 24, 2007, agents from the Commission’s Tampa Office of the Enforcement Bureau (“*Tampa Office*”) monitored broadcast transmissions on 106.1 MHz in Port St. Lucie, Florida. The agents, using direction finding techniques, located the transmissions to an antenna mounted on a house in Port St. Lucie, Florida. A search of the St. Lucie County Property Appraiser records confirmed that the property is owned by Mr. Maignan. 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 A search of the Commission’s databases revealed no authorization for a broadcast station on that frequency at that address.

3. On January 24, 2007, after determining that transmissions were emanating from Mr. Maignan’s house, agents from the Tampa Office, in a joint investigation with the Port St. Lucie Police Department, and accompanied by Mr. Maignan, inspected the premises. The agents observed a coaxial cable from the antenna enter a room located in the northeast side of his house through the attic. The coaxial cable was connected to station transmitter equipment. On January 24, 2007, Mr. Maignan admitted to an Officer of the Port St. Lucie Police Department and to the agents from the Tampa Office that he personally purchased and set up the radio station equipment without obtaining a license from the Commission.

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. On January 22 and 24, 2007, the measurements indicated that the signals were 3,657 and 4,771 times greater, respectively, than the maximum permissible level for a non-licensed Part 15 transmitter.

4. On January 9, 2008, the Tampa Office issued a *Notice of Apparent Liability for Forfeiture* to Mr. Maignan in the amount of ten thousand dollars (\$10,000), for the apparent willful and repeated violation of Section 301 of the Act.³ Mr. Maignan submitted a response to the *NAL* requesting a reduction or cancellation of the proposed forfeiture.

III. DISCUSSION

5. The proposed forfeiture amounts in this case was assessed in accordance with Section 503(b) of the Communications Act of 1934, as amended (“Act”),⁴ Section 1.80 of the Rules,⁵ 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. Maignan’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.⁶

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.”⁷ Agents from the Tampa Office determined that, on January 22 and 24, 2007, an unlicensed radio station operated on 106.1 MHz from Mr. Maignan’s residence in Port St. Lucie, Florida. Mr. Maignan admitted that he purchased and set up the radio station equipment without a license from the Commission. Based on the evidence before us, we find Mr. Maignan willfully⁸ and repeatedly⁹ violated Section 301 of the Act by operating radio transmission apparatus without a license.

7. Mr. Maignan’s response to the *NAL* does not dispute the violation, but he asserts he did not know that his actions violated the rules or the Act. Although he may have been unaware that his actions were illegal, for a violation to be willful, the violator need not intend to violate the rules and need only consciously and deliberately perform actions that violate the rules.¹⁰ Mr. Maignan admits that he

³ *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200832700007 (Enf. Bur., Tampa Office, January 9, 2008) (“*NAL*”).

⁴ 47 U.S.C. § 503(b).

⁵ 47 C.F.R. § 1.80.

⁶ 47 U.S.C. § 503(b)(2)(E).

⁷ 47 U.S.C. § 301.

⁸ 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’, when used with reference to the commission or omission of any act, 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).

⁹ Section 312(f)(2) of the Act, 47 U.S.C. § 312(f)(2), which also applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that “[t]he 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.”

¹⁰ See *supra* note 8.

consciously operated his radio transmitter on more than one day. Thus, we find no grounds to cancel the forfeiture.

8. Finally, Mr. Maignan states that payment of the forfeiture would pose an undue financial hardship to his family. 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 examining the financial documentation submitted by Mr. Maignan, we agree and reduce the forfeiture to \$1,500 based on his demonstrated inability to pay.

9. We have examined Mr. Maignan'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 a reduction of the proposed forfeiture to \$1,500 is warranted, based on demonstrated inability to pay.

IV. ORDERING CLAUSES

10. 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, Roubens Maignan **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of one thousand five hundred dollars (\$1,500) for violation of Section 301 of the Act.¹²

11. 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[s] 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.

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

FEDERAL COMMUNICATIONS COMMISSION

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

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).