

floor window in the rear of the building.

3. An agent again monitored the frequency 90.5 MHz on April 5 and 6, 2008, and both times determined that a radio station was broadcasting from 120 E. 19th Street in Brooklyn, NY. The agent took field strength measurements and determined that the signals being broadcast on April 5 and April 6, 2008, exceeded the limits for operation under Part 15 of the Rules and therefore required a license. The agent searched Commission databases and found no evidence of a Commission authorization for this operation on 90.5 MHz in Brooklyn, New York.

4. On April 11, 2008, agents returned to the apartment building at 120 E. 19th Street in Brooklyn, NY and met with the building superintendent, who advised the agents that the antenna coaxial cable was going into apartment 2E, which was leased to Jocelyn Edwards and Jean Clerveau. Agents subsequently confirmed with the owners of the building that Edwards and Clerveau are the lessees of apartment 2E.

5. On April 15, 2008, the New York Office sent, via regular mail and certified mail, return receipt requested, a *NOUO* addressed to Clerveau and Edwards at 120 E. 19th Street, Brooklyn, New York 11226. The *NOUO* warned Clerveau and Edwards that operation of the unlicensed radio station on 90.5 MHz violates Section 301 of the Act and outlined the potential penalties for such a violation, including seizure of the equipment, fines and imprisonment. The *NOUO* also directed Clerveau and Edwards to terminate operation of the unlicensed station immediately and provided Clerveau and Edwards ten days to reply.

6. On April 16, 2008, Commission agents went to 120 E. 19th Street, in Brooklyn to conduct a follow-up inspection. Agents still observed a FM broadcast antenna on the roof of the building and the antenna coaxial cable going into the same window that the building superintendent previously had identified as apartment 2E. The agents knocked on the door of apartment 2E and identified themselves to a woman who answered the door. In response to questions from the agents, the woman said that the apartment belongs to Clerveau and Edwards and that they were not home and that she did not have a telephone number to contact them. The woman told the agents that they should come back the next morning when Clerveau would be home. The agents gave the woman a copy of the *NOUO* and asked her to give it to Clerveau and Edwards.

7. On April 17, 2008, Commission agents again returned to 120 E. 19th Street to conduct a follow-up investigation. The agents attempted to conduct an inspection at apartment 2E with Clerveau and Edwards, but no one answered when the agents knocked on the door. When leaving the building, the agents noted that the FM broadcasting antenna that previously had been on the roof had been removed.

8. Agents returned to 120 E. 19th Street on June 7, 2008, to interview Jean Clerveau and Jocelyn Edwards. Agents spoke to Clerveau, who stated that he was not aware of a radio station operating from his apartment, but that other individuals live in the apartment with him and Edwards. Agents did not observe any radio station equipment in the apartment at that time. In response to questions from agents, Clerveau reported that he is responsible for providing electricity to the apartment.

9. On October 24, 2008, the New York Field Office issued a Notice of Apparent Liability for Forfeiture ("*NAL*") in the amount of \$10,000 jointly to Clerveau and Edwards for providing services and facilities incidental to the operation of an unlicensed radio transmitter on the frequency 90.5 MHz in Brooklyn, New York in violation of Section 301 of the Act.⁴ In their response, Clerveau and Edwards deny having a radio station in their apartment and claim that the radio station is operated from a building across the street.

⁴ *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200932380002 (Enf. Bur., New York Office, rel. October 24, 2008).

III. DISCUSSION

10. 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* ("Forfeiture Policy Statement").⁷ In examining Clerveau's and Edwards' 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 As discussed below, we have examined Clerveau's and Edwards' response to the NAL pursuant to the aforementioned statutory factors, our rules, and the Forfeiture Policy Statement, and find that a \$10,000 forfeiture is warranted.

11. We decline to cancel the proposed forfeiture based merely on Clerveau's and Edwards' claim that an unlicensed station was not operating from their apartment but instead was operating from a building across the street. Section 301 of the Act requires that no person shall use or operate any apparatus for the transmission of energy of communications or signals by radio within the United States except under and in accordance with the Act and with a license. Section 3(33) of the Act defines "communications by radio" as "the transmission by radio of writing, signs, signals, pictures, and sounds of all kinds, including all instrumentalities, facilities, apparatus, and services (among other thing the receipt, forwarding, and delivery of communications) incidental to such transmission."⁹ Using mobile direction finding equipment, agents determined that, on March 9, 2008, April 5, 2008, and April 6, 2008, an unlicensed radio station was broadcasting on 90.5 MHz from 120 E. 19th Street, Apartment 2E, Brooklyn, New York 11226.¹⁰ The building superintendant confirmed that the coaxial cable connected to the roof antenna was going into the window of apartment 2E. Because Clerveau and Edwards are the lessees of apartment 2E and Clerveau is responsible for the electricity in apartment 2E, they are jointly liable for the unlicensed operation as the individuals who provided services and facilities incidental to the transmission of unlicensed communications by radio.¹¹ Absent evidence that FCC agents' direction findings and field strength measurements were in error, we stand by our agents' determination that an unlicensed broadcast station was operating from apartment 2E at 120 E. 19th Street in Brooklyn, NY.¹²

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 47 U.S.C. § 153(33).

¹⁰ We note that we agree with Clerveau's and Edwards' claim that the agents did not find any radio station equipment when they inspected apartment 2E on June 7, 2008; by that time, the antenna had been removed from the roof of the apartment building and the agents did not expect to find any equipment in the apartment. The absence of radio station equipment in their apartment on June 7, 2008, however, is not relevant to whether an unlicensed radio station operated from Clerveau's and Edwards' apartment on March 9, 2008, April 5, 2008, and April 6, 2008.

¹¹ See *Joni K. Craig*, Forfeiture Order, 21 FCC Rcd 10793 (EB 2006) (finding that Craig, who provided the garage and real property on which the operation took place, and provided the electric current used to power the radio station, participated in the operation of the unlicensed station). To the extent Clerveau and Edwards claim that other individuals were living in their apartment, we note that we have previously held that because Section 301 of the Act provides that "no person shall use or operate" 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. See *Jean L. Senatus*, 20 FCC Rcd 14418 (EB 2005).

¹² FCC agents receive extensive training on how to use professional radio direction-finding equipment. Agents are

12. We have examined Clerveau's and Edwards' 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 Clerveau and Edwards repeatedly violated Section 301 of the Act. Considering the entire record and the factors listed above, we find that cancellation or reduction of the proposed \$10,000 forfeiture is not warranted.

IV. ORDERING CLAUSES

13. **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, Jean Clerveau and Jocelyn Edwards **ARE JOINTLY AND SEVERALLY LIABLE FOR A MONETARY FORFEITURE** in the amount of \$10,000 for repeatedly violating Section 301 of the Act.¹³

14. 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.¹⁴ 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. Clerveau and Edwards shall also send electronic notification on the date said payment is made to NER-Response@fcc.gov

15. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by First Class Mail and Certified Mail Return Receipt Requested to Clerveau and Edwards at their address of record.

FEDERAL COMMUNICATIONS COMMISSION

G. Michael Moffitt
Regional Director, Northeast Region
Enforcement Bureau

specially trained on how to confirm accurate radio bearings on signal sources in congested areas. In this case, the accuracy of the results is further supported by the fact that the same signal source was identified multiple times.

¹³ 47 U.S.C. § 503(b), 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4), 11.35(a), 73.1560(a), 73.1745(a), 73.3526(e)(12).

¹⁴ 47 U.S.C. § 504(a).