

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

In the Matter of)	File No: EB-08-TP-0342
)	
Frankie Grover)	NAL/Acct. No.: 200932700006
)	
Lakeland, Florida)	FRN: 0019037555
)	
)	

FORFEITURE ORDER

Adopted: October 30, 2009

Released: November 3, 2009

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 two thousand five hundred dollars (\$2,500) to Frankie Grover for willful and repeated violation of Section 301 of the Communications Act of 1934, as amended (“*Act*”).¹ The noted violations involve Mr. Grover’s operation of an unlicensed radio transmitter on the frequency 87.9 MHz in Lakeland, Florida.

II. BACKGROUND

2. On October 2, 2008, in response to a complaint that Mr. Grover was operating an unlicensed radio station in Lakeland, Florida, agents from the Commission’s Tampa Office of the Enforcement Bureau (“*Tampa Office*”), used direction finding techniques, to locate the source of broadcast transmissions on 87.9 MHz to the Kingston Lakeside Inn (“*Lakeside Inn*”) in Lakeland, Florida. 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 Commission records, neither Mr. Grover, nor any other person or entity, holds an authorization to broadcast on that frequency from any location in the state of Florida.

3. While monitoring the station on October 2, 2008, agents from the Tampa Office heard the station air a callsign of WGBC FM. This callsign is not listed in the Commission’s databases. Also on October 2, 2008, the agents observed a vehicle registered to Mr. Grover parked in the driveway of his home with a personalized license tag of “WGBC 1.” The vehicle contained advertising on the rear window for the “Frankie Grover Morning Show” for “WGBC FM.BIZ.” The advertisement listed the address of the Lakeside Inn in Lakeland, Florida where the unlicensed radio station was found earlier in the day.

4. On October 3, 2008, agents from the Tampa Office visited WGBC’s webpage, <http://www.wgbcfm.biz/>, which lists Mr. Grover as the CEO of WGBCFM. The website also listed daily show times for different DJ’s including the “Frankie Grover Morning Show” from 7-10 am Monday through

¹ 47 U.S.C. § 301.

² Section 15.239 of the Rules provides that non-licensed broadcasting in the 30-88 MHz band is permitted only if the field strength of the transmission does not exceed 100 µV/m at three meters. 47 C.F.R. § 15.239. The measurements made on October 2, 2008, indicated that the signal was 3,942 times greater than the maximum permissible level for a non-licensed Part 15 transmitter.

Friday.

5. On October 7, 2008 and again on November 6, 2008, agents from the Tampa Office, using direction finding techniques, located the source of unidentified broadcast transmissions on 87.9 MHz to the Lakeside Inn located in Lakeland, Florida. The agents 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 According to Commission records, neither Mr. Grover, nor any other person or entity, holds an authorization to broadcast on that frequency from any location in the state of Florida.

6. During the morning of November 7, 2008, agents from the Tampa Office observed that the unlicensed radio station was broadcasting on 87.9 MHz from the Lakeside Inn in Lakeland, Florida and heard an individual identify himself as Frankie Grover during the “Frankie Grover Morning Show.” The agents inspected the radio station and interviewed Mr. Grover, who admitted that he was solely responsible for setting up and operating the broadcast station on 87.9 MHz. Mr. Grover admitted he did not have a license to operate on 87.9 MHz but stated that on an unspecified date and time he spoke to an unidentified person at the FCC who told him it was okay to broadcast as long as no one complained and there was no interference.

7. On August 18, 2009, the Tampa Office issued a *Notice of Apparent Liability for Forfeiture* to Mr. Grover in the amount of ten thousand dollars (\$10,000), for the apparent willful and repeated violation of Section 301 of the Act.⁴ Mr. Grover submitted a response to the *NAL* requesting reduction or cancellation of the proposed forfeiture.

III. DISCUSSION

8. 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. Grover’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

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. On October 2 and 7, and November 6 and 7, 2008, agents from the Tampa Office observed an unlicensed radio station operating on 87.9 MHz from the Lakeside Inn in Lakeland, Florida. The station identified itself on the air and advertised itself as WGBC. Station advertisements and materials stated that Mr. Grover broadcast a radio program on the station and was the station CEO. Mr. Grover admitted that he was solely responsible for setting up and operating the radio station, which did not have a license, from the Lakeside Inn.

³ The measurements made on October 7, 2008, indicated that the signal was 5,221 times greater than the maximum permissible level for a non-licensed Part 15 transmitter and the measurements made on November 6, 2008, indicated that the signal was 5,157 times greater than the maximum permissible level for a non-licensed Part 15 transmitter.

⁴ *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200932700006 (Enf. Bur., Tampa Office, August 18, 2009) (“*NAL*”).

⁵ 47 U.S.C. § 503(b).

⁶ 47 C.F.R. § 1.80.

⁷ 47 U.S.C. § 503(b)(2)(E).

10. In his response to the *NAL*, Mr. Grover again admits that he operated a radio station on 87.9 MHz from Lakeland, Florida, but states that he did not intend to violate the Rules. Mr. Grover states that he thought he was operating a low power FM station pursuant to Part 15 of the Rules.⁸ However, because he did not use equipment certified for Part 15 use, Mr. Grover states he was unaware that his station exceeded the allowable Part 15 output power.⁹ Mr. Grover also states he had no way to verify that his equipment was set at the proper output power.¹⁰

11. Although Mr. Grover states he believed no license was necessary to operate his station, that belief was mistaken.¹¹ Part 15 of the Rules¹² sets forth conditions under which intentional radiators may operate without an individual license. However, if intentional radiators fail to comply with all of the applicable conditions set forth in Part 15 of the Rules, they are not authorized to operate in the United States without a license.¹³ Mr. Grover admits that he did not use a transmitter certified for Part 15 use¹⁴ and that he exceeded the allowable Part 15 output power.¹⁵ Accordingly, his operations were not consistent with the requirements of Part 15 and were unlicensed. Moreover, his belief that his actions did not violate the Act is irrelevant as to whether his violation was willful, as he intentionally operated the station.¹⁶ Thus, based on the evidence before us, we find that Mr. Grover willfully¹⁷ and repeatedly¹⁸ violated Section 301 of the Act by operating radio transmission apparatus without a license on October 2 and 7, and November 6 and 7, 2008.

12. Finally, Mr. Grover requests a reduction of the forfeiture, saying the forfeiture would pose a financial hardship. With regard to an individual's or entity's inability to pay, the Commission has

⁸ Response to *NAL* at 1.

⁹ *Id.*

¹⁰ *Id.*

¹¹ We note that Mr. Grover was familiar with the Commission's rules regarding broadcast stations, as he was formerly the President of AM Station WHNR, facility ID 21766, Cypress Gardens, Florida.

¹² See 47 C.F.R. §§ 15.1 *et seq.*

¹³ 47 C.F.R. § 15.1(b). ("operation of an intentional or unintentional radiator that is not in accordance with the regulations in this part must be licensed pursuant to the provisions of section 301 of the Communications Act...").

¹⁴ See 47 C.F.R. 15.201(b) ("all intentional radiators operating under [Part 15] shall be certificated by the Commission...").

¹⁵ See 47 C.F.R. § 15.239 and notes 2 and 3 *supra*.

¹⁶ The Commission has consistently stated that ignorance of the law is not a mitigating factor. *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387 (1991), *citing Vernon Broadcasting, Inc.*, Memorandum Opinion and Order, 60 RR 2d 1275, 1277 (1986) and *Fay Neel Eggleston*, Memorandum Opinion and Order, 19 FCC 2d 829 (1969).

¹⁷ 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).

¹⁸ As provided by 47 U.S.C. § 312(f)(2), a continuous violation is "repeated" if it continues for more than one day. The *Conference Report* for Section 312(f)(2) indicates that Congress intended to apply this definition to Section 503 of the Act as well as Section 312. See H.R. Rep. 97th Cong. 2d Sess. 51 (1982). See *Southern California Broadcasting Company*, 6 FCC Rcd 4387, 4388 (1991) and *Western Wireless Corporation*, 18 FCC Rcd 10319 at fn. 56 (2003).

determined that, in general, gross revenues are the best indicator of an ability to pay a forfeiture.¹⁹ We have reviewed Mr. Grover's documentation and conclude that the forfeiture should be reduced to \$2,500, based on Mr. Grover's documented inability to pay the forfeiture.²⁰

13. We have examined Mr. Grover'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 reduce the proposed forfeiture to \$2,500, based on Mr. Grover's inability to pay.

IV. ORDERING CLAUSES

14. 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, Frankie Grover **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of two thousand five hundred dollars (\$2,500) for violations of Section 301 of the Act.²¹

15. 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.²² 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. Mr. Grover will also send electronic notification on the date said payment is made to SCR-Response@fcc.gov.

¹⁹ 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).

²⁰ In his response to the *NAL*, Mr. Grover also requested to pay the forfeiture in installments. Mr. Grover should follow the procedures specified in paragraph 15 *infra* for requesting full payment under an installment plan.

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

²² 47 U.S.C. § 504(a).

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

FEDERAL COMMUNICATIONS COMMISSION

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