

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

In the Matter of

)

) File No: EB-09-HU-0065

Jerry and Deborah Stevens

)

) NAL/Acct. No. 201032540002

Austin, Texas

)

) FRN 0019271485

)

)

FORFEITURE ORDER

Adopted: January 5, 2010

Released: January 7, 2010

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 ten thousand dollars (\$10,000) to Jerry and Deborah Stevens for willful and repeated violation of Section 301 of the Communications Act of 1934, as amended (“*Act*”).¹ The noted violations involve Jerry and Deborah Stevens’ operation of an unlicensed radio transmitter on the frequency 90.1 MHz in Austin, Texas.

II. BACKGROUND

2. On August 27, 2009, in response to a complaint about an unlicensed radio station in the Austin, Texas area, agents from the Commission’s Houston Office of the Enforcement Bureau (“Houston Office”) confirmed by direction finding techniques that signals on the frequency 90.1 MHz were emanating from Jerry and Deborah Stevens’ residence in Austin, Texas. The agents took field strength measurements of the signals and determined the signals exceeded the limits for operation under Part 15 of Commission’s Rules (“*Rules*”)² and therefore, required a license. A search of the Commission’s databases found no evidence of a Commission authorization for operation on 90.1 MHz at this location in Austin, Texas.

3. On August 31, 2009, the Houston Office issued a Notice of Unlicensed Operation to Jerry and Deborah Stevens warning them that the radio transmissions on 90.1 MHz from their residence were not authorized by the Commission and outlining possible penalties for continued unlicensed operation. On September 14, 2009, the Houston Office received a reply from Jerry and Deborah Stevens acknowledging receipt of the Notice of Unlicensed Operation and requesting additional time to provide information. Jerry and Deborah Stevens were granted an additional thirty days to provide the Commission with information concerning authority to operate on the frequency 90.1 MHz from their residence.

4. On September 21, 2009, agents from the Houston Office confirmed by direction finding techniques that signals on the frequency 90.1 MHz were emanating from Jerry and Deborah Stevens’

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. On August 27, 2009, field strength measurements indicated that the signals were 1,110 times greater than the maximum permissible level for a non-licensed Part 15 transmitter.

residence in Austin, Texas. The agents took field strength measurements of the signals and determined the signals exceeded the limits for operation under Part 15 of Commission's Rules.³

5. On October 16, 2009, an agent from the Houston Office again confirmed by direction finding techniques that signals on the frequency 90.1 MHz were emanating from Jerry and Deborah Stevens' residence in Austin, Texas. The agent took field strength measurements of the signals and determined the signals exceeded the limits for operation under Part 15 of the Rules.⁴

6. On October 19, 2009, the Houston Office received a second response to the Notice of Unlicensed Operation from Jerry and Deborah Stevens. In this response, Jerry and Deborah Stevens admitted operating radio transmitting equipment only within the boundaries of the State of Texas, and questioned the Commission's jurisdiction over intrastate communications.

7. On November 10, 2009, the Houston Office issued a *Notice of Apparent Liability for Forfeiture* to Jerry and Deborah Stevens in the amount of ten thousand dollars (\$10,000), for the apparent willful and repeated violation of Section 301 of the Act.⁵ Jerry and Deborah Stevens submitted a response to the *NAL* denying that the Commission has jurisdiction over this matter and requesting that the matter be dropped.

III. DISCUSSION

8. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Act,⁶ Section 1.80 of the Rules,⁷ 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 Jerry and Deborah Stevens' 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

9. Section 301 of the Act⁹ states that no person shall use or operate any apparatus for the transmission of energy or communications or signals by radio within the United States, specifically "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," or from one place within a State to another State, except under and in accordance with the Act and with a license granted under the provisions of the Act. Thus, Section 301 of the Act explicitly sets forth the Commission's jurisdiction over all radio transmissions, both interstate and intrastate.¹⁰ On August 27, September 21, and October 16, 2009, agents

³ On September 21, 2009, field strength measurements indicated that the signals were 1,225 times greater than the maximum permissible level for a non-licensed Part 15 transmitter.

⁴ On October 16, 2009, field strength measurements indicated that the signals were 1,547 times greater than the maximum permissible level for a non-licensed Part 15 transmitter.

⁵ *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 201032540002 (Enf. Bur., Houston Office, November 10, 2009) ("*NAL*").

⁶ 47 U.S.C. § 503(b).

⁷ 47 C.F.R. § 1.80.

⁸ 47 U.S.C. § 503(b)(2)(E).

⁹ 47 U.S.C. § 301.

¹⁰ *See Joseph Frank Ptak*, Decision, 14 FCC Rcd 9317, 9320, para. 13 (1999). *See also U.S. v. Butterfield*, 91 F.Supp.2d 704 (D.VT 2000).

from the Houston Office determined that unlicensed radio transmissions on the frequency 90.1 MHz originated from Jerry and Deborah Stevens' residence. Jerry and Deborah Stevens were notified that the unlicensed radio transmissions violated the Act by a Notice of Unlicensed Operation dated August 31, 2009. In response to the Notice of Unlicensed Operation, Jerry and Deborah Stevens did not deny that they operated an unlicensed radio station from their residence, and admitted to operating a radio station solely within the borders of Texas. In response to the *NAL*, Jerry and Deborah Stevens did not deny any of the facts raised in the *NAL*. The Stevens also admitted that the transmissions occurred, stating that "the above referenced transmission does not involve any state other than the State of Texas."¹¹ Thus, based on the evidence before us, we find that Jerry and Deborah Stevens willfully¹² and repeatedly¹³ violated Section 301 of the Act by operating radio transmission apparatus without a license on August 27, September 21, and October 16, 2009.

10. In response to the *NAL*, Jerry and Deborah Stevens assert that the Commission lacks jurisdiction over their actions, because they operated a radio station solely within the boundaries of the State of Texas. The Stevens also question whether the resident agent who signed the *NAL* had the authority to do so.

11. As stated above, section 301 of the Act explicitly sets forth the Commission's jurisdiction over all radio transmissions, both interstate and intrastate.¹⁴ Thus, contrary to the Stevens' assertion, the Commission does not lack jurisdiction over the use of radio transmitting equipment within the State of Texas. Moreover, the resident agent who signed the *NAL* is stationed in Houston, Texas and is an employee of the Commission, working in the South Central Region of the Enforcement Bureau. Resident agents at each installation are delegated authority by the Commission to act upon applications, requests, or other matters, which are not in hearing status.¹⁵ In addition, pursuant to Section 1.80(f), a designee of the Commission, such as the resident agent, may issue a written notice of apparent liability.¹⁶ The notice issued by the agent identified the provision of the Act apparently violated, described the nature and dates of the apparent violations, and specified the proposed forfeiture penalty.¹⁷ Accordingly, issuance of the *NAL* was proper.

12. We have examined Jerry and Deborah Stevens' 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 find no basis for cancellation or reduction of the \$10,000 forfeiture proposed for this violation.

¹¹ Response to *NAL* at 6.

¹² 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).

¹³ 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).

¹⁴ See *Joseph Frank Ptak*, Decision, 14 FCC Rcd 9317, 9320, para. 13 (1999). See also *U.S. v. Butterfield*, 91 F.Supp.2d 704 (D.VT 2000).

¹⁵ 47 C.F.R. § 0.314.

¹⁶ 47 C.F.R. § 1.80(f).

¹⁷ See 47 C.F.R. §§ 1.80(f)(1)(i)-(iv).

IV. ORDERING CLAUSES

13. 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, Jerry and Deborah Stevens **ARE LIABLE FOR A MONETARY FORFEITURE** in the amount of ten thousand dollars (\$10,000) for violations of Section 301 of the Act.¹⁸

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.¹⁹ 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. Jerry and Deborah Stevens will also send electronic notification on the date said payment is made to SCR-Response@fcc.gov.

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

FEDERAL COMMUNICATIONS COMMISSION

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

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

¹⁹ 47 U.S.C. § 504(a).