

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

In the Matter of)	File Number: EB-10-BS-0050
)	
Robert Brown)	NAL/Acct. No.: 201132260002
)	
Boston, Massachusetts)	FRN: 0020036992

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: October 1, 2010

Released: October 1, 2010

By the District Director, Boston Office, Northeast Region, Enforcement Bureau:

I. INTRODUCTION

1. In this *Notice of Apparent Liability for Forfeiture* (“NAL”), we find that Robert Brown (“Brown”) willfully and repeatedly violated section 301 of the Communications Act of 1934, as amended (“Act”),¹ by operating an unlicensed transmitter on the frequency 99.7 MHz in the Mattapan neighborhood of Boston, Massachusetts. Based on our review of the facts and circumstances of this case, we find that Brown is apparently liable for a forfeiture in the amount of fifteen thousand dollars (\$15,000).

II. BACKGROUND

2. On October 5, 2009, in response to a complaint from a licensed broadcaster, agents from the Enforcement Bureau’s Boston Office (“Boston Office”) monitored 99.7 MHz in Boston, Massachusetts. The agents used direction-finding techniques to locate the source of the signal on 99.7 MHz to a two-story, multi-family dwelling at 61 Ormond Street in the Mattapan neighborhood of Boston, Massachusetts. They observed an antenna mounted on the roof of the building with a coaxial cable leading to a basement window. The agents then took field strength measurements and determined that the broadcast signals exceeded the limits for operation under Part 15 of the Commission’s rules (“Rules”)² and therefore required a license. A review of the Commission’s records revealed that there was no FCC authorization to operate a radio station on 99.7 MHz in the Mattapan neighborhood of Boston, Massachusetts.

3. After taking the field strength measurements, the agents approached the building at 61 Ormond Street and were met by one of the residents, who led them to the basement. In the basement, the agents observed radio station equipment, which included an RF amplifier, an FM modulator with a front panel display reading 99.7 MHz, and a power supply. Before leaving, agents left an on-scene Notice of Unlicensed Operation (“NOUO”) in the mail slot identified by the resident as belonging to the building owner.

4. Shortly thereafter, the office assistant for the Boston Office contacted the agents and explained that a man named Lloyd Morris (“Morris”) called and asked to meet the agents at 61 Ormond

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. Measurements showed that the field strength of the station’s signal exceeded the permissible level for a non-licensed Part 15 transmitter.

Street. The agents returned to 61 Ormond Street and were met by Morris and Brown. Both men admitted to being the owners and operators of the station. The agents handed Morris a NOUO, which warned that operation of the unlicensed radio station on 99.7 MHz violated section 301 of the Act. Furthermore, the NOUO outlined the potential penalties for such a violation, including seizure of the equipment, fines, and imprisonment. The NOUO also directed Morris to terminate operation of the unlicensed station immediately. Finally, the agents explained verbally both to Morris and Brown the penalties associated with continued operation of an unlicensed station. Morris and Brown agreed to shut off the transmitter. When the agents left the scene, they confirmed that the station was off the air.

5. On October 15, 2009, the Boston Office issued NOUOs to Morris and Brown for unlicensed operation on 99.7 MHz in the Mattapan neighborhood of Boston, Massachusetts. Each NOUO was sent via certified mail and regular mail to the home addresses of Morris and Brown as identified by the driver's licenses they provided to the agents during the inspection on October 5, 2009. The copy of the NOUO sent by certified mail to Morris was returned unclaimed, but the copy sent by regular mail was not. A receipt for the NOUO sent via certified mail to Brown was received on October 20, 2009. No written or verbal response to the NOUO was received from either Morris or Brown.

6. On February 11, 2010, agents observed a signal on 99.7 MHz in Boston, Massachusetts following a report from the same complainant that the station had resumed operations. The agents used direction-finding techniques to locate the source of the signal on 99.7 MHz to the same two-story multi-family dwelling at 61 Ormond Street in the Mattapan neighborhood of Boston, Massachusetts. They observed an antenna mounted on the roof of the building with a coaxial cable leading to a basement window. Again, the agents took field strength measurements and determined that the broadcast signals exceeded the limits for operation under Part 15 of the Rules and therefore, the station required a license. A review of the Commission's records revealed that Brown did not have a license for the operation of a radio station on 99.7 MHz in the Mattapan neighborhood of Boston, Massachusetts. The agents attempted to conduct an inspection, but no one answered the door.

III. DISCUSSION

7. Section 503(b) of the Act provides that any person who willfully or repeatedly fails to comply substantially with the terms and conditions of any license, or willfully or repeatedly fails to comply with any of the provisions of the Act or of any rule, regulation, or order issued by the Commission thereunder, shall be liable for a forfeiture penalty. The term "willful" as used in section 503(b) of the Act has been interpreted to mean simply that the acts or omissions are committed knowingly.³ The term "repeated" means the commission or omission of such act more than once or for more than one day.⁴

8. Section 301 of the Act 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 except under and in accordance with the Act and with a license granted under the provisions of the Act.⁵ Agents determined that an unlicensed radio station operated on 99.7 MHz from 61 Ormond Street in the

³ 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 e.g., *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991), *recon. denied*, 7 FCC Rcd 3454 (1992).

⁴ 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."

⁵ 47 U.S.C. § 301.

Mattapan neighborhood of Boston, Massachusetts, on October 5, 2009 and on February 11, 2010. Morris and Brown met with agents at 61 Ormond Street on October 5, 2009, and identified themselves as the station's owners and operators. Notwithstanding the issuance of an on-scene NOUO and a verbal warning at the inspection on October 5, 2009, as well as a written NOUO sent by regular and certified mail on October 15, 2009, the station was found operating again on February 11, 2010. Brown operated a radio station without the requisite Commission authorization. Because Brown operated the station knowingly, we find that the violation of section 301 of the Act was willful. Because the operation took place on more than one day, we find that the violation was repeated.

9. Pursuant to the Commission's *Forfeiture Policy Statement* and section 1.80 of the Rules, the base forfeiture amount for operation without an instrument of authorization is \$10,000.⁶ In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in section 503(b)(2)(E) of the Act, which include the nature, circumstances, extent, and gravity of the violations, 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 We find that an upward adjustment in the forfeiture amount is warranted because Brown operated an unlicensed radio station with full knowledge that such activity violated the Act and the Rules.⁸ Applying the *Forfeiture Policy Statement*, section 1.80 of the Rules, and the statutory factors to the instant case, we conclude that Brown is apparently liable for a forfeiture in the amount of fifteen thousand dollars (\$15,000).⁹

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, 0.314 and 1.80 of the Rules, Robert Brown is hereby **NOTIFIED** of his **APPARENT LIABILITY FOR A FORFEITURE** in the amount of fifteen thousand dollars (\$15,000) for violations of section 301 of the Act.¹⁰

11. **IT IS FURTHER ORDERED** that, pursuant to section 1.80 of the Commission's Rules, within thirty days of the release date of this *Notice of Apparent Liability for Forfeiture*, Robert Brown **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

12. Payment of the forfeiture must be made by credit card, check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the 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,

⁶ *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087 (1997) ("*Forfeiture Policy Statement*"), recon. denied, 15 FCC Rcd 303 (1999); 47 C.F.R. § 1.80.

⁷ 47 U.S.C. § 503(b)(2)(E).

⁸ See 47 C.F.R. § 1.80(b)(4).

⁹ A *Notice of Apparent Liability for Forfeiture* is also being issued on this date to Lloyd Morris. See *Lloyd Morris, Notice of Apparent Liability for Forfeiture*, DA 10-1907 (Enforcement Bureau, Boston Office, rel. October 1, 2010).

¹⁰ 47 U.S.C. §§ 301, 503(b); 47 C.F.R. §§ 0.111, 0.311, 0.314, 1.80.

Washington, D.C. 20554.¹¹ If you have questions, please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: ARINQUIRIES@fcc.gov. Robert Brown shall also send electronic notification to NER-Response@fcc.gov on the date said payment is made.

13. The written statement seeking reduction or cancellation of the proposed forfeiture, if any, must include a detailed factual statement supported by appropriate documentation and affidavits pursuant to sections 1.80(f)(3) and 1.16 of the Rules. The written statement must be mailed to Federal Communications Commission, Enforcement Bureau, Northeast Region, Boston Office, 1 Batterymarch Park, Quincy, MA 02169 and must include the NAL/Acct. No. referenced in the caption. The statement shall also be emailed to NER-Response@fcc.gov.

14. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices (“GAAP”); or (3) some other reliable and objective documentation that accurately reflects the petitioner’s current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

15. **IT IS FURTHER ORDERED** that a copy of this *Notice of Apparent Liability for Forfeiture* shall be sent by Certified Mail, Return Receipt Requested, and regular mail, to Robert Brown at his address of record.

FEDERAL COMMUNICATIONS COMMISSION

Dennis Loria
District Director
Boston Office
Northeast Region
Enforcement Bureau

¹¹ See 47 C.F.R. § 1.1914.