

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

In the Matter of	)	File Number: EB-09-MA-0089
	)	
Christopher M. Myers	)	NAL/Acct. No: 201032600003
	)	
Lauderhill, Florida	)	FRN: 0020022315
	)	
	)	

**MEMORANDUM OPINION AND ORDER**

**Adopted:** July 21, 2011

**Released:** July 21, 2011

By the Chief, Enforcement Bureau:

**I. INTRODUCTION**

1. In this Memorandum Opinion and Order (“*MO&O*”), issued pursuant to section 405 of the Communications Act of 1934, as amended (“*Act*”),<sup>1</sup> we deny in part and grant in part the Petition for Reconsideration (“*Petition*”)<sup>2</sup> filed by Christopher M. Myers (“*Mr. Myers*”) in response to the *Forfeiture Order* issued by the Enforcement Bureau’s South Central Region on September 13, 2010.<sup>3</sup> The *Forfeiture Order* imposed a monetary forfeiture in the amount of \$10,000 for *Mr. Myers*’s willful and repeated violation of section 301 of the *Act*,<sup>4</sup> involving *Mr. Myers*’s operation of an unlicensed radio transmitter on the frequency 95.9 MHz in Lauderhill, Florida. For the reasons set forth below, we deny in part and grant in part the *Petition* and reduce the forfeiture to \$5,000.

**II. BACKGROUND**

2. On July 12, 2010, the Enforcement Bureau’s Miami Office (“*Miami Office*”) issued a Notice of Apparent Liability for Forfeiture (“*NAL*”)<sup>5</sup> to *Mr. Myers* for operation of an unlicensed radio station on the frequency 95.9 MHz, which was affirmed in the *Forfeiture Order*. As discussed in the *NAL* and referenced in the *Forfeiture Order*, agents from the Miami Office determined that *Mr. Myers*, despite receipt of a Notice of Unlicensed Operation,<sup>6</sup> continued to operate an unlicensed station on 95.9 MHz from

<sup>1</sup> 47 U.S.C. § 405.

<sup>2</sup> Although *Mr. Myers* captioned his pleading as an “Answer to Notice of Apparent Liability for Forfeiture” and it was dated within the timeframe for response, due to misrouting by the U.S. Post Office, the pleading was not received by the Miami Office until September 29, 2010, after release of the *Forfeiture Order*. Accordingly, we have treated *Mr. Myers*’s pleading as a petition for reconsideration of the *Forfeiture Order*. See Letter from Kenneth S. Mair, Esq., Counsel to *Mr. Myers*, to Miami Office (August 11, 2010) (“*Petition*”).

<sup>3</sup> *Christopher M. Myers*, Forfeiture Order, 25 FCC Rcd 13032 (Enf. Bur. South Central Region, 2010) (“*Forfeiture Order*”).

<sup>4</sup> 47 U.S.C. § 301.

<sup>5</sup> *Christopher M. Myers*, Notice of Apparent Liability for Forfeiture, 25 FCC Rcd 9069 (Enf. Bur. Miami Office, 2010) (“*NAL*”).

<sup>6</sup> On August 14, 2008, the Miami Office issued a Notice of Unlicensed Operation (“*NOUO*”) to *Mr. Myers* for his unlicensed operation of an FM broadcast station on the frequency 91.7 MHz from his residential condominium in Lauderhill, Florida. The *NOUO* warned that unlicensed operation of a radio station violated the *Act* and the Rules and

his residential condominium in Lauderhill, Florida. In the Petition, Mr. Myers requests cancellation or reduction of the proposed forfeiture based on his claims that he did not operate the unlicensed station and that he was unable to pay the \$10,000 forfeiture.<sup>7</sup>

3. Specifically, Mr. Myers asserts that: (1) although he owns the residential condominium referenced in the *NAL*, the condominium was occupied and controlled by a renter from 2007 until 2010 and that he resided elsewhere during that period; (2) although he was present in the condominium during the inspection on March 7, 2010, the transmitter was not transmitting at that time; (3) after he received notice of the unlicensed operation, he took affirmative steps to terminate the lease with the unidentified renter; (4) a broadcasting outfit known as WBIG is responsible for any unlicensed operations on 95.9 MHz and 91.7 MHz; and (5) he does not hold any pecuniary interest in WBIG.<sup>8</sup>

### III. DISCUSSION

4. The forfeiture amount in this case was assessed in accordance with section 503(b) of the Act,<sup>9</sup> section 1.80 of the Commission's rules ("Rules"),<sup>10</sup> and the Commission's *Forfeiture Policy Statement*.<sup>11</sup> In examining the Petition, 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.<sup>12</sup> As discussed below, we grant in part and deny in part the Petition, and reduce the forfeiture based on Mr. Myers's documented inability to pay.

5. First, we do not find Mr. Myers's statement that he did not reside in the residential condominium reliable. Mr. Myers's driver's license and most recent vehicle registration list the condominium as his residence. Mr. Myers received and signed for a *NOUO* and the *NAL* at the condominium. We believe this demonstrates that Mr. Myers did in fact reside in the condominium.<sup>13</sup> Moreover, Mr. Myers's assertion directly contradicts his statement to Lauderhill police on March 7, 2010 that he had moved back into the condominium "four months or so ago."<sup>14</sup> Therefore, by his own admission, Mr. Myers resided in the condominium from December 2009 to March 2010, a period of time covering when the unlicensed station was in operation (February 4, 2010, and March 7, 2010). Thus, we find no reason to cancel or reduce the forfeiture on this basis.

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that continued operation could subject the operator to further enforcement action.

<sup>7</sup> Petition at 2-3.

<sup>8</sup> *Id.*

<sup>9</sup> 47 U.S.C. § 503(b).

<sup>10</sup> 47 C.F.R. § 1.80.

<sup>11</sup> *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).

<sup>12</sup> 47 U.S.C. § 503(b)(2)(E).

<sup>13</sup> The Lauderhill police department conducted surveillance at the condominium building several nights before March 7, 2010 and observed Mr. Myers's vehicle parked in front each night, thereby corroborating that Mr. Myers did indeed reside at the condominium in March 2010.

<sup>14</sup> See Supplemental Report of Detective Charles Smith, Lauderhill Police Department, Criminal Investigations Division dated March 25, 2010 ("Police Report").

6. Second, we disagree with Mr. Myers's statement that the station was not transmitting on March 7, 2010. At approximately 6:50 P.M. on March 7, 2010, agents from the Miami Office determined that an unlicensed station was operating from the condominium. The Lauderhill Police Department executed a search warrant for the condominium at approximately 10:00 P.M. and found only Mr. Myers present. After observing the unlicensed station on the air at 10:41 P.M., agents from the Miami Office entered the condominium at approximately 10:50 P.M., observed the transmitting equipment, and found only Mr. Myers and the Lauderhill police present. The unlicensed station continued to transmit until FCC agents disconnected the transmitter, which was located in the residence, at approximately 11:10 P.M. Thus, Mr. Myers was present in the condominium when the unlicensed station was operating on March 7, 2010.

7. Third, we also do not find that Mr. Myers's alleged uncorroborated steps to terminate the lease with a renter<sup>15</sup> for the condominium after he received the *NOUO* warrant mitigation of the forfeiture. As stated above, we believe Mr. Myers resided in the condominium before and after the *NOUO* was issued. However, even if he took such steps, the Commission has long held that post-notification corrective action taken to come into compliance with the Rules is expected, and does not nullify or mitigate any prior forfeitures or violations.<sup>16</sup> Moreover, even if the uncorroborated lease existed, as stated above, Mr. Myers admitted to the Lauderhill police that he resided in the condominium from December 2009 to March 2010 and that he knew the equipment was located in the condominium. Therefore, based on his admissions alone, the Bureau could have found Mr. Myers in willful and repeated violation of the Act.

8. Fourth, whether WBIG is also associated with the unlicensed station and whether Mr. Myers owns an interest in WBIG have no bearing on our determination as to Mr. Myers's operation of the unlicensed station. We have previously held that, because section 301 of the Act provides that "no person shall use or operate"<sup>17</sup> 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.<sup>18</sup> For the purposes of section 301, the word "operate" has been interpreted to mean "the general conduct or management of a station as a whole as distinct from the specific technical work involved in the actual transmission of signals."<sup>19</sup> That is, the use of the word "operate" in section 301 of the Act captures not just the "actual, mechanical manipulation of radio apparatus"<sup>20</sup> but also operation of radio stations generally.<sup>21</sup> To determine whether an individual is involved in the general conduct or management of the station, we look to, among other things, whether such individual exercises

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<sup>15</sup> We note that the renter named in the Petition does not match the first name of the renter provided to the Lauderhill police during Mr. Myers's interview on March 7, 2010.

<sup>16</sup> See e.g., *International Broadcasting Corporation*, Order on Review, 25 FCC Rcd 1538, 1540, para. 6 (2010); *Seawest Yacht Brokers*, Forfeiture Order, 9 FCC Rcd 6099 (1994); *Rama Communications, Inc.*, Memorandum Opinion and Order, 24 FCC Rcd 4981 (Enf. Bur. 2009); *Bethune-Cookman College, Inc.*, Forfeiture Order, 24 FCC Rcd 4513 (South Central Region 2009).

<sup>17</sup> 47 U.S.C. § 301.

<sup>18</sup> *Jean L. Senatus*, Forfeiture Order, 20 FCC Rcd 14418 at para. 11 (Enf. Bur. 2005).

<sup>19</sup> See *Campbell v. U.S.*, 167 F.2d 451, 453 (5<sup>th</sup> Cir. 1948) (comparing the use of the words "operate" and "operation" in sections 301, 307, and 318 of the Act and concluding that the word "operate" as used in section 301 of the Act means both the technical operation of the station as well as the general conduct or management of the station).

<sup>20</sup> *Id.*

<sup>21</sup> *Id.* See 47 U.S.C § 307(c)(1).

control over the station, which the Commission has defined to include “. . . any means of actual working control over the operation of the [station] in whatever manner exercised.”<sup>22</sup>

9. Mr. Myers admitted to the Lauderhill police that he was aware the transmitting equipment was located in the condominium, but he asserted that he did not know what the equipment was used for and that the previous tenant had brought it into the unit.<sup>23</sup> Assuming, *arguendo*, that Mr. Myers did not *technically* operate the radio station equipment in his residence and was originally unaware of the nature of the equipment, once he received the *NOUO* he had the opportunity to evaluate all unknown electronic equipment in his residence and ensure that operation did not continue. On March 7, 2010, agents from the Miami Office observed a coaxial cable that connected a roof-mounted antenna on the condominium building to an FM radio transmitter operating on the frequency 95.9 MHz located inside Mr. Myers’s residence. Mr. Myers was the only person present in the residence, besides the Lauderhill police, on March 7, 2010 when the station was in operation. Therefore, at a minimum, Mr. Myers allowed the radio station equipment to remain in a residential space under his control and could have removed or unplugged the equipment at any time. Thus, Mr. Myers exercised control over the station which qualifies as operation under section 301 of the Act. Based on the evidence before us, we uphold our finding that Mr. Myers is liable under section 301 of the Act for the willful and repeated operation of an unlicensed radio station.

10. Finally, with regard to an individual’s or entity’s inability to pay claim, the Commission has determined that, in general, gross revenues are the best indicator of an ability to pay a forfeiture.<sup>24</sup> Having reviewed Mr. Myers’s submitted documentation, we conclude that the forfeiture should be reduced to \$5,000 based on his documented inability to pay the forfeiture amount. Accordingly, finding that Mr. Myers operated an unlicensed radio station and is unable to pay the full proposed forfeiture amount, we grant in part and deny in part the Petition and reduce the forfeiture to \$5,000.

#### IV. ORDERING CLAUSES

11. Accordingly, **IT IS ORDERED**, pursuant to section 405 of the Communications Act of 1934, as amended,<sup>25</sup> and section 1.106 of the Rules,<sup>26</sup> that the Petition for Reconsideration filed by Christopher M. Myers **IS GRANTED IN PART AND DENIED IN PART**.

12. **IT IS ALSO ORDERED** that, pursuant to section 503(b) of the Act, and sections 0.111, 0.311 and 1.80(f)(4) of the Rules,<sup>27</sup> Christopher M. Myers **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of five thousand dollars (\$5,000) for violations of section 301 of the Act.

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<sup>22</sup> *Revision of Rules and Policies for the Direct Broadcast Satellite Service*, 11 FCC Rcd 9712, 9747 (1995), *recon. denied*, *DIRECTV, Inc. v. FCC*, 110 F.3d 816 (D.C. Cir. 1997).

<sup>23</sup> See Police Report.

<sup>24</sup> See *PJB Communications of Virginia, Inc.*, Forfeiture Order, 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.*, Forfeiture Order, 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*, Forfeiture Order, 15 FCC Rcd 8640 (2002) (forfeiture not deemed excessive where it represented approximately 7.6 percent of the violator’s gross revenues).

<sup>25</sup> 47 U.S.C. § 405.

<sup>26</sup> 47 C.F.R. § 1.106.

<sup>27</sup> 47 U.S.C. §§ 301, 503(b); 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4).

13. 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 Memorandum Opinion and 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.<sup>28</sup> 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 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](mailto:ARINQUIRIES@fcc.gov) with any questions regarding payment procedures. Mr. Myers shall also send electronic notification to [SCR-Response@fcc.gov](mailto:SCR-Response@fcc.gov) on the date said payment is made.

14. **IT IS FURTHER ORDERED** that this Memorandum Opinion and Order shall be sent by both regular mail and by certified mail, return receipt requested, to Christopher M. Myers at his address of record and to his attorney, Kenneth S. Mair, Esq., Mair, Mair & Associates P.A., 3500 North State Road 7, Suite 479, Fort Lauderdale, FL 33319.

**FEDERAL COMMUNICATIONS COMMISSION**

P. Michele Ellison  
Chief, Enforcement Bureau

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<sup>28</sup>47 U.S.C. § 504(a).