

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

In the Matter of

Andre Alleyne

Jessie White

Brooklyn, New York

) File Number: EB-08-NY-0283

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) NAL/Acct. No: 200932380003

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) FRN: 0018 1064 01

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**FORFEITURE ORDER**

**Adopted:** July 25, 2011

**Released:** July 26, 2011

By the Regional Director, Northeast 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) jointly and severally to Andre Alleyne (“Mr. Alleyne”) and Jessie White (“Ms. White”) for willfully and repeatedly violating section 301 of the Communications Act of 1934, as amended (“Act”),<sup>1</sup> by operating an unlicensed radio station on the frequency 96.5 MHz in Brooklyn, New York. In this *Order*, we consider Mr. Alleyne’s and Ms. White’s arguments in support of their request to cancel the proposed forfeiture and deny each in turn.<sup>2</sup>

**II. BACKGROUND**

2. On July 23 and 24, 2008, in response to a complaint of interference from a licensed FM broadcast station, agents from the Enforcement Bureau’s New York Office (“New York Office”) monitored 96.5 MHz in Brooklyn, New York. On each of those days, the agent observed a radio signal on 96.5 MHz and used direction-finding techniques to locate the source of the transmissions to an apartment building at 580 Flatbush Avenue, Brooklyn, New York 11225. The agent subsequently took field strength measurements and determined that the signals being broadcast exceeded the limits for operation under Part 15 of the Commission’s rules<sup>3</sup> (“Rules”) 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 96.5 MHz in Brooklyn, New York.

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<sup>1</sup> 47 U.S.C. § 301.

<sup>2</sup> Letter from Andre Alleyne to New York Office, Northeast Region, Enforcement Bureau (January 2, 2009)(“*Response*”). Although Jessie White did not separately submit a response, we treat Alleyne’s response as a joint response on behalf of himself and Ms. White given that the response requests that we absolve Ms. White of all responsibility for the station’s operation.

<sup>3</sup> 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  $\mu$ V/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.

3. After completing the field strength measurements on July 24, 2008, agents from the New York Office conducted an investigation on the roof of the building located at 580 Flatbush Avenue. The agents observed an FM broadcast antenna on the roof and a coaxial cable leading from the antenna into an apartment window on the building. The agents learned from the building superintendent that the coaxial cable went into the apartment jointly leased by Mr. Alleyne and Ms. White. When the agents attempted to inspect the station, the two women who answered the door refused to allow the agents to enter the apartment. However, one of the women, who was later identified as Ms. White, stated that she resides in the apartment with her boyfriend. The agents advised her that the radio station in the apartment was operating without a license and requested that she turn off the station. After returning to the vehicle, the agents monitored 96.5 MHz and noted that the station was off the air.

4. On July 30, 2008, the New York Office issued a Notice of Unlicensed Operation (“*NOUO*”) to Mr. Alleyne and Ms. White.<sup>4</sup> The *NOUO* warned Mr. Alleyne and Ms. White that operation of the unlicensed radio station on 96.5 MHz violated section 301 of the Act and outlined the potential penalties for such a violation. The *NOUO* also directed Mr. Alleyne and Ms. White to terminate operation of the unlicensed station immediately and provided them ten days to reply. The New York Office did not receive a response to the *NOUO*.

5. On October 30, 2008, an agent from the New York Office returned to 580 Flatbush Avenue and met with the building superintendent, who reported that Mr. Alleyne contacted him shortly after the agent’s investigation on July 24, 2008, regarding the antenna on the roof. The superintendent explained that he accompanied Mr. Alleyne to the roof that day so that Mr. Alleyne could remove the antenna. The agent went to the roof with the superintendent and confirmed that the antenna previously observed on July 23 and 24, 2008 had been removed.

6. On December 10, 2008, the New York Office issued a Notice of Apparent Liability for Forfeiture (“*NAL*”) in the amount of \$10,000 to Mr. Alleyne and Ms. White for operating an unlicensed radio station on the frequency 96.5 MHz in Brooklyn, New York.<sup>5</sup> In their response to the *NAL*,<sup>6</sup> Mr. Alleyne and Ms. White do not dispute the findings in the *NAL*, but request that we cancel the proposed forfeiture because (1) they allowed a friend to operate the station from their apartment; (2) they believed the radio station complied with all FCC regulations; (3) they ceased operating the station as soon as they became aware that it was illegal; and (4) they do not have the financial resources to pay the forfeiture.

### III. DISCUSSION

7. The proposed forfeiture amount in this case was assessed in accordance with section 503(b) of the Act,<sup>7</sup> section 1.80 of the Rules,<sup>8</sup> and the Commission’s *Forfeiture Policy Statement*.<sup>9</sup> In examining Alleyne’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.<sup>10</sup>

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<sup>4</sup> *Andre Alleyne and Jessie White*, Notice of Unlicensed Operation (Enf. Bur., New York Office, rel. July 30, 2008).

<sup>5</sup> *Andre Alleyne and Jessie White*, Notice of Apparent Liability for Forfeiture, *NAL*/Acct. No. 200932380005 (Enf. Bur., New York Office, rel. Dec. 10, 2008).

<sup>6</sup> See *supra* note 2.

<sup>7</sup> 47 U.S.C. § 503(b).

<sup>8</sup> 47 C.F.R. § 1.80.

<sup>9</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>10</sup> 47 U.S.C. § 503(b)(2)(E).

As discussed below, we have considered the response to the *NAL* in light of these statutory factors and have found that a reduction in the forfeiture is not warranted.

8. 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.<sup>11</sup> For the purposes of section 301 of the Act, 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>12</sup> In other words, the use of the word “operate” in section 301 of the Act captures not just the “actual, mechanical manipulation of radio apparatus”<sup>13</sup> but also operation of a radio station generally.<sup>14</sup> To determine whether an individual is involved in the general conduct or management of the station, we can consider whether such individual exercises 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>15</sup> As described below, we find that Mr. Alleyne and Ms. White are jointly and severally liable for operating the unlicensed radio station on 96.5 MHz because the facts, taken together, show that they demonstrated management and control over the station as a whole.

9. On July 23 and 24, 2008, agents determined, and Mr. Alleyne and Ms. White concede, that an unlicensed radio station operated on 96.5 MHz from their apartment. Mr. Alleyne assisted with the installation and removal of the station’s antenna on the roof of his building. In response to the *NAL*, Mr. Alleyne specifically states that “we put up the antenna” on July 20, 2008.<sup>16</sup> Ms. White demonstrated control over the station on the day of the inspection when she turned off the transmitter at the agents’ request. The fact that someone else also may have been involved in the station’s operation, as Mr. Alleyne and Ms. White claim in their response to the *NAL*, does not make them any less culpable for the station’s operations. 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 similar reasons, we decline to absolve Ms. White of liability for operation of the unlicensed station, as requested by Mr. Alleyne. In light of the control she demonstrated over the station during the inspection, we find that Ms. White is equally culpable for violating section 301 of the Act. Accordingly, we find that the totality of Mr. Alleyne’s and Ms. White’s actions amounted to willful and repeated violations of section 301 of the Act.

10. We also decline to cancel or reduce the forfeiture based on Mr. Alleyne’s and Ms. White’s claim that they believed the station complied with the Commission’s Rules. The Commission has consistently stated that ignorance of the law is not a mitigating factor.<sup>19</sup> Similarly, the fact that Mr. Alleyne and Ms. White ceased operating the station immediately upon being advised of its illegality does

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<sup>11</sup> 47 U.S.C. § 301.

<sup>12</sup> See *Campbell v. United States*, 167 F.2d 451, 453 (5th 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>13</sup> *Id.*

<sup>14</sup> *Id.* See also 47 U.S.C § 307(c)(1).

<sup>15</sup> See *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>16</sup> *Response* at 1.

<sup>17</sup> 47 U.S.C. § 301.

<sup>18</sup> See *Joni Craig*, Forfeiture Order, 21 FCC Rcd 10793 (2006) at para. 10.

<sup>19</sup> See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991), citing *Vernon Broadcasting, Inc.*, 60 RR 2d 1275, 1277 (1986) and *Fay Neel Eggleston*, 19 FCC 2d 829 (1969).

not warrant a cancellation or reduction in the forfeiture. As the Commission has stated, “corrective action taken to come into compliance with Commission rules or policy is expected, and does not nullify or mitigate any prior forfeitures or violations.”<sup>20</sup>

11. Mr. Alleyne and Ms. White also ask that we cancel or reduce the proposed forfeiture based on their inability to pay. However, neither Mr. Alleyne nor Ms. White submitted any supporting documentation. As explicitly stated in the *NAL*, “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.”<sup>21</sup> We therefore deny Mr. Alleyne’s and Ms. White’s request to cancel the forfeiture based on their inability to pay.

12. We have examined Mr. Alleyne’s and Ms. White’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 conclude that Mr. Alleyne and Ms. White willfully and repeatedly violated section 301 of the Act and that the \$10,000 forfeiture proposed in the *NAL* is 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, Andre Alleyne and Jessie White **ARE JOINTLY AND SEVERALLY LIABLE FOR A MONETARY FORFEITURE** in the amount of \$10,000 for willfully and repeatedly violating section 301 of the Act.<sup>22</sup>

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.<sup>23</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. Alleyne and Ms. White shall also send electronic notification on the date said payment is made to [NER-Response@fcc.gov](mailto:NER-Response@fcc.gov)

<sup>20</sup> See, e.g., *AT&T Wireless Services, Inc.*, Forfeiture Order, 17 FCC Rcd 21866, 21870-71 (2002) (finding that remedial action to correct the violation at issue was not a mitigating factor and noting that all licensees and Commission regulates are expected to promptly take corrective action when violations are brought to their attention). See also, *Seawest Yacht Brokers*, 9 FCC Rcd 6099 (1994)(corrective action taken to comply with the Rules is expected, and does not mitigate any prior forfeitures or violations).

<sup>21</sup> See *NAL* at para. 17.

<sup>22</sup> 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).

<sup>23</sup> 47 U.S.C. § 504(a).

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 Andre Alleyne and Jessie White at their addresses of record.

**FEDERAL COMMUNICATIONS COMMISSION**

G. Michael Moffitt  
Regional Director, Northeast Region  
Enforcement Bureau