

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

In the Matter of)
) File No: EB-11-SJ-0028
Eleuterio Lebron)
) NAL/Acct. No.: 201132680003
Guayama, PR)
) FRN: 0020992913

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: September 21, 2011

Released: September 21, 2011

By the Resident Agent, San Juan Office, South Central Region, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture (“NAL”), we find that Eleuterio Lebron (“Mr. Lebron”), apparently willfully and repeatedly violated section 301 of the Communications Act of 1934, as amended (“Act”),¹ by operating an unlicensed radio transmitter on the frequency 88.5 MHz in Guayama, Puerto Rico. We conclude that Mr. Lebron is apparently liable for a forfeiture in the amount of fifteen thousand dollars (\$15,000).

II. BACKGROUND

2. On June 22 and 23, 2011, in response to a complaint, agents from the Enforcement Bureau’s San Juan Office (“San Juan Office”), used direction-finding techniques to locate the source of radio frequency transmissions on the frequency 88.5 MHz to a building located at Barrio Mosquito, Carretera 3, Km 148.9, Guayama, Puerto Rico. On both days, the agents 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 On June 29, 2011, agents from the San Juan Office inspected the station located in the building previously identified on June 22 and 23, 2011. During the inspection, the operator of the station telephoned Mr. Lebron, who confirmed with the agents that he was the station owner. Mr. Lebron then instructed the operator to take the station off the air and the agents confirmed that the operation on the frequency 88.5 MHz ceased. A review of Commission records shows that Mr. Lebron does not hold any authorization to broadcast on any frequency in Guayama, Puerto Rico.

III. DISCUSSION

3. Section 503(b) of the Act,³ 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

¹ 47 U.S.C. § 301.

² Part 15 of the Rules sets out the conditions and technical requirements under which certain radio transmission devices may be used without a license. In relevant part, 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.

³ 47 U.S.C. § 503(b).

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. Section 312(f)(1) of the Act defines willful as the “conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate” the law.⁴ The legislative history to section 312(f)(1) of the Act clarifies that this definition of willful applies to both section 312 and 503(b) of the Act⁵ and the Commission has so interpreted the term in the section 503(b) context.⁶ The Commission may also assess a forfeiture for violations that are merely repeated, and not willful.⁷ The term “repeated” means the commission or omission of such act more than once or for more than one day.⁸

4. 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.⁹ For the purposes of section 301, the word “operate” has been interpreted to mean both the technical operation of the station, as well as “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.”¹⁰ 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”¹¹ but also operation of a radio station generally.¹² 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.”¹³ On June 22, 23, and 29, 2011, agents from the San Juan Office determined that an unlicensed radio station on the frequency 88.5 MHz operated from a building located at Barrio Mosquito, Carretera 3, Km 148.9, Guayama, Puerto Rico. Because Mr. Lebron is the owner of the unlicensed station at this location and he controlled the station’s operations, we find that he willfully operated the station in apparent violation of the Rules. Because the operation occurred on more than one day, we find that the apparent violation was repeated. Based on the evidence before us, we find

⁴ 47 U.S.C. § 312(f)(1).

⁵ H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982) (“This provision [inserted in section 312] defines the terms ‘willful’ and ‘repeated’ for purposes of section 312, and for any other relevant section of the [A]ct (e.g., section 503). . . . As defined . . . ‘willful’ means that the licensee knew that he was doing the act in question, regardless of whether there was an intent to violate the law. ‘Repeated’ means more than once, or where the act is continuous, for more than one day. Whether an act is considered to be ‘continuous’ would depend upon the circumstances in each case. The definitions are intended primarily to clarify the language in sections 312 and 503, and are consistent with the Commission’s application of those terms . . .”).

⁶ See, e.g., *Application for Review of Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991).

⁷ See, e.g., *Callais Cablevision, Inc.*, Notice of Apparent Liability for Monetary Forfeiture, 16 FCC Rcd 1359, 1362 ¶ 10 (2001) (“*Callais Cablevision, Inc.*”) (proposing a forfeiture for, *inter alia*, a cable television operator’s repeated signal leakage).

⁸ 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.” See *Callais Cablevision, Inc.*

⁹ 47 U.S.C. § 301.

¹⁰ 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).

¹² *Id.* See also 47 U.S.C § 307(c)(1).

¹³ 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).

that Mr. Lebron apparently willfully and repeatedly violated section 301 of the Act by operating radio transmission equipment without the required Commission authorization.

5. 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 \$10,000.¹⁴ 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.¹⁵ In this regard, we take into account the fact that on February 9, 2010 Mr. Lebron operated an unlicensed station on the same frequency from the same location and was warned verbally and in writing that such action violated the Act.¹⁶ The fact that Mr. Lebron continued to operate after being put on notice that his unlicensed operation contravened the Act, the Commission's rules, and related Commission orders, demonstrates a deliberate disregard for the Commission's requirements warranting an upward adjustment of \$5,000.¹⁷ Applying the *Forfeiture Policy Statement*, section 1.80 of the Rules, and the statutory factors to the instant case, we conclude that Mr. Lebron is apparently liable for a total forfeiture in the amount of \$15,000.

IV. ORDERING CLAUSES

6. Accordingly, **IT IS ORDERED** that, pursuant to section 503(b) of the Communications Act of 1934, as amended, and sections 0.111, 0.204, 0.311, 0.314 and 1.80 of the Commission's rules, Eleuterio Lebron is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of fifteen thousand dollars (\$15,000) for violations of section 301 of the Act.¹⁸

7. **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, Eleuterio Lebron **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

8. 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 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,

¹⁴ *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.

¹⁵ 47 U.S.C. § 503(b)(2)(E).

¹⁶ See *Eleuterio Lebron*, Notice of Unlicensed Operation (Enf. Bur., San Juan Office, rel. March 2, 2010).

¹⁷ See *Robert Brown*, Notice of Apparent Liability for Forfeiture, 25 FCC Rcd 13740 (Enf. Bur. 2010); *Loyd Morris*, Notice of Apparent Liability for Forfeiture, 25 FCC Rcd 13736 (Enf. Bur. 2010).

¹⁸ 47 U.S.C. § 301, 503(b); 47 C.F.R. §§ 0.111, 0.204, 0.311, 0.314, 1.80.

Washington, D.C. 20554.¹⁹ For questions about payment procedures, please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: ARINQUIRIES@fcc.gov. Eleuterio Lebron shall also send an email notification to SCR-Response@fcc.gov on the date said payment is made.

9. 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.²⁰ The written statement, if any, shall be mailed to Federal Communications Commission, Enforcement Bureau, South Central Region, San Juan Office, Room 762, Federal Building, Hato Rey, Puerto Rico, and must include the NAL/Acct. No. referenced in the caption. The written statement shall also be emailed to SCR-Response@fcc.gov.

10. 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.

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

FEDERAL COMMUNICATIONS COMMISSION

William Berry
Resident Agent
Southeast Region
Enforcement Bureau

¹⁹ See 47 C.F.R. § 1.1914.

²⁰ 47 C.F.R. §§ 1.16, 1.80(f)(3).