

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

In the Matter of)	
)	File No.: EB-11-MA-0009
Neal Davis)	
)	NAL/Acct. No.: 201232600001
Fort Lauderdale, Florida)	
)	FRN: 0021223367
)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: October 17, 2011

Released: October 17, 2011

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

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture (“NAL”), we find that Neal Davis (“Mr. Davis”) 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 96.1 MHz in Fort Lauderdale, Florida. We conclude that Mr. Davis is apparently liable for a forfeiture in the amount of ten thousand dollars (\$10,000).

II. BACKGROUND

2. On January 21, March 8, and March 10, 2011, in response to a complaint, agents from the Enforcement Bureau’s Miami Office (“Miami Office”) used direction-finding techniques to locate the source of radio frequency transmissions on the frequency 96.1 MHz to a commercial property in Fort Lauderdale, Florida. On January 21, March 8, and March 10, 2011, 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 A review of the Commission’s records revealed that no license or authorization was issued to Mr. Davis or anyone else to operate a radio station on 96.1 MHz at this location.

3. While monitoring the station on March 10, 2011, agents from the Miami Office heard a male voice identify himself as “Shawty Pimp.” On the same date, the Fort Lauderdale Police Department (“FLPD”) executed a search warrant at the commercial property and found Mr. Davis operating the Disc Jockey (“DJ”) equipment. After the location was secured, agents from the Miami Office inspected the unlicensed radio station and observed a Facebook page for “Nintysixonefm Realsideradio” on a laptop in the station and an envelope addressed to Neal Davis near the DJ equipment. The agents also observed the transmitter displaying 96.10 MHz. An agent from the Miami Office subsequently found information on the Internet advertising 96.1 FM, including a phone number that agents previously heard broadcast on 96.1 MHz and information for a DJ that goes by “Djshawtypimp.”³ Mr. Davis was identified by agents from the

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 On April 6, 2011, an agent from the Miami Office searched Facebook and found information on pages for “Leon Djshawtypimp Davis (Djshawtypimp)” and “Nintysixonefm Realsideradio.” The About Leon section on Facebook

Miami Office as DJ “Shawty Pimp” by comparing a photograph of “Djshawtypimp” to Mr. Davis’s Florida driver’s license photograph.⁴

III. DISCUSSION

4. 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.⁵ 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.⁶ The legislative history to section 312(f)(1) of the Act clarifies that this definition of willful applies to both sections 312 and 503(b) of the Act,⁷ and the Commission has so interpreted the term in the section 503(b) context.⁸ The Commission may also assess a forfeiture for violations that are merely repeated, and not willful.⁹ The term “repeated” means the commission or omission of such act more than once or for more than one day.¹⁰

5. 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.¹¹ As the agents

for “Leon Djshawtypimp Davis” indicated: “EVERYBODY KEEP IT LOCK TO 96.1FM.” A post made on November 26, 2010, at 11:55 a.m., by “Leon Djshawtypimp Davis” states: “DJ.SHAWTYPIMP96.1FM REALSIDERADIO everybody tune in 96.1fm rite now we live in the building call us @954 448 9384.” This is the same phone number agents heard broadcast on 96.1 MHz on January 21, 2011, and on March 10, 2011. The About Nintysixonefm section on Facebook for “Nintysixonefm Realsideradio” indicated: “EVERYBODY KEEP IT LOCK TO 96.1FM...HIT ME UP (954) 369-7826 OR 954 448 9384 ANY QUESTION.” The telephone number 954-448-9384 is the same number agents heard broadcast on 96.1 MHz on January 21, 2011, and on March 10, 2011. This is also the same phone number listed for “Leon Djshawtypimp Davis (Djshawtypimp)” on Facebook. See www.facebook.com/DJ.SHAWTYPIMP96.1FM (last visited April 6, 2011); www.facebook.com/nintysixonefm.realsideradio (last visited on April 6, 2011).

⁴ On April 6, 2011, an agent from the Miami Office found a copy of a photograph of Mr. Davis by a microphone at a radio station posted by “Leon Djshawtypimp Davis” in album “WE ALL THE WAY LIVE WITH DJ.SHAWTYPIMP96.1 FM.” See www.facebook.com/DJ.SHAWTYPIMP96.1FM (last visited on April 6, 2011). The station in the photograph appeared to be the station inspected on March 10, 2011.

⁵ 47 U.S.C. § 503(b).

⁶ 47 U.S.C. § 312(f)(1).

⁷ 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 act (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”).

⁸ See, e.g., *Application for Review of Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991) (“*Southern California Broadcasting Co.*”).

⁹ See, e.g., *Callais Cablevision, Inc.*, Notice of Apparent Liability for Monetary Forfeiture, 16 FCC Rcd 1359, 1362, para. 10 (2001) (“*Callais Cablevision, Inc.*”) (proposing a forfeiture for, *inter alia*, a cable television operator’s repeated signal leakage).

¹⁰ *Southern California Broadcasting Co.*, 6 FCC Rcd at 4388, para. 5; *Callais Cablevision, Inc.*, 16 FCC Rcd at 1362, para. 9.

¹¹ 47 U.S.C. § 301.

determined, Mr. Davis operated an unlicensed radio station on the frequency 96.1 MHz from a commercial property in Fort Lauderdale, Florida, on January 21, March 8, and March 10, 2011. The violation is corroborated by a review of the Commission's records, which revealed that Mr. Davis did not have a license to operate a radio station on this frequency at this location. Furthermore, because Mr. Davis consciously and deliberately operated the station on more than one day, we find the apparent violation not only willful, but also repeated. Therefore, based on the evidence before us, we find that Mr. Davis apparently willfully and repeatedly violated section 301 of the Act by operating radio transmission equipment without the required Commission authorization.

6. 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 \$10,000.¹² 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.¹³ Applying the *Forfeiture Policy Statement*, section 1.80 of the Rules, and the statutory factors to the instant case, we conclude that Mr. Davis is apparently liable for a forfeiture of \$10,000.

IV. ORDERING CLAUSES

7. Accordingly, **IT IS ORDERED** that, pursuant to section 503(b) of the Communications Act of 1934, as amended, and sections 0.111, 0.204(b), 0.311, 0.314, and 1.80 of the Commission's rules, Neal Davis is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of ten thousand dollars (\$10,000) for violations of section 301 of the Act.¹⁴

8. **IT IS FURTHER ORDERED** that, pursuant to section 1.80 of the Commission's rules, within thirty (30) days of the release date of this Notice of Apparent Liability for Forfeiture, Neal Davis **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

9. 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, Washington, D.C. 20554.¹⁵ If you have questions regarding payment procedures, please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: ARINQUIRIES@fcc.gov. If payment is made, Neal Davis shall send electronic notification on the date said payment is made to SCR-Response@fcc.gov.

¹² *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.

¹³ 47 U.S.C. § 503(b)(2)(E).

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

¹⁵ See 47 C.F.R. § 1.1914.

10. 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 1.16 and 1.80(f)(3) of the Rules.¹⁶ Mail the written statement to Federal Communications Commission, Enforcement Bureau, South Central Region, Miami Office, P.O. Box 520617, Miami, Florida 33152, and include the NAL/Acct. No. referenced in the caption. In addition, Neal Davis shall email the written response to SCR-Response@fcc.gov.

11. 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.

12. **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 Neal Davis at his address of record.

FEDERAL COMMUNICATIONS COMMISSION

Stephanie Dabkowski
Resident Agent
Miami Office
South Central Region
Enforcement Bureau

¹⁶ 47 C.F.R. §§ 1.16, 1.80(f)(3).