

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

In the Matter of)	File No.: EB-10-MA-0048
)	
Whisler Fleurinor)	NAL/Acct. No.: 201132600002
)	
Fort Lauderdale, Florida)	FRN: 0020655106
)	
)	

FORFEITURE ORDER

Adopted: October 20, 2011

Released: October 20, 2011

By the Regional Director, South Central Region, Enforcement Bureau:

I. INTRODUCTION

1. In this Forfeiture Order (*Order*), we issue a monetary forfeiture in the amount of five hundred dollars (\$500) to Whisler Fleurinor (Mr. Fleurinor) for willful and repeated violation of section 301 of the Communications Act of 1934, as amended (Act).¹ The noted violations involved Mr. Fleurinor's operation of an unlicensed radio transmitter on the frequency 99.5 MHz from his commercial property in Fort Lauderdale, Florida.

II. BACKGROUND

2. On March 4, 2011, the Enforcement Bureau's Miami Office (Miami Office) issued a Notice of Apparent Liability for Forfeiture (*NAL*)² to Mr. Fleurinor for his operation of an unlicensed radio transmitter without the requisite Commission authorization. As discussed in detail in the *NAL*, agents from the Miami Office determined that Mr. Fleurinor operated an unlicensed radio station on the frequency 99.5 MHz from his commercial property on three separate occasions.³ In view of the record evidence and the fact that he operated an unlicensed station after the receipt of two Notices of Unlicensed Operation, the *NAL* proposed a forfeiture against Mr. Fleurinor for violation of section 301 of the Act.⁴ Mr. Fleurinor submitted a response to the *NAL* requesting cancellation of the proposed forfeiture, asserting the forfeiture "would create an impossible burden for Mr. Fleurinor to bear or satisfy."⁵

¹ 47 U.S.C. § 301.

² *Whisler Fleurinor*, Notice of Apparent Liability for Forfeiture, 26 FCC Rcd 2478 (Enf. Bur. 2011).

³ *Id.* A comprehensive recitation of the facts and history of this case can be found in the *NAL* and is incorporated herein by reference.

⁴ *Id.* at 2480.

⁵ Letter from Lewis H. Goldman, P.C., attorney for Mr. Fleurinor, to Diane Law-Hsu, Regional Counsel, South Central Region, Enforcement Bureau, dated August 2, 2011 at 1.

III. DISCUSSION

3. The proposed forfeiture amount in this case was assessed in accordance with section 503(b) of the Act,⁶ section 1.80 of the Commission's rules ("Rules"),⁷ and the *Forfeiture Policy Statement*.⁸ In examining Mr. Fleurinor'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.⁹ As discussed below, we have considered Mr. Fleurinor's response in light of these statutory factors, and we reduce the forfeiture to \$500 based solely on his documented inability to pay.

4. As set forth in the *NAL*, agents from the Miami Office determined that Mr. Fleurinor operated an unlicensed station on the frequency 99.5 MHz on March 16, August 24, and August 31, 2010.¹⁰ In his response to the *NAL*, Mr. Fleurinor does not deny any of these facts. Accordingly, we find that Mr. Fleurinor willfully and repeatedly violated section 301 of the Act by operating an unlicensed radio transmitter.

5. With regard to an individual 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.¹¹ Based on the financial documents and other materials provided by Mr. Fleurinor, we find insufficient basis to grant his request for cancellation of the forfeiture. In this regard, the information provided by Mr. Fleurinor does not support cancellation of the forfeiture amount, because the forfeiture amount does not exceed Mr. Fleurinor's average gross revenues for the years covered by the financial documents.¹² We do, however, find sufficient basis to reduce the forfeiture to \$500 based on the financial documentation Mr. Fleurinor submitted.¹³

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(f)(4) of the Commission's rules, Whisler Fleurinor **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of five

⁶ 47 U.S.C. § 503(b).

⁷ 47 C.F.R. § 1.80.

⁸ *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), *recon. denied*, 15 FCC Rcd 303 (1999) ("*Forfeiture Policy Statement*").

⁹ 47 U.S.C. § 503(b)(2)(E).

¹⁰ *NAL* at 2478-2479.

¹¹ 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).

¹² See *Lancaster Educational Broadcasting Foundation*, Forfeiture Order, 24 FCC Rcd 9013, 9015 (Enf. Bur. Investigations & Hearings Div. 2009) (denying request for cancellation of proposed forfeiture based on inability to pay claim because licensee's gross revenues exceeded proposed forfeiture amount).

¹³ This forfeiture amount falls within the percentage range that the Commission has previously found acceptable. See *supra* note 11. If Mr. Fleurinor believes that paying this amount still presents financial difficulties, we note that he could always pursue an installment payment plan to lessen the immediate impact of the forfeiture.

hundred dollars (\$500) for violations of section 301 of the Act.¹⁴

7. Payment of the forfeiture shall be made in the manner provided for in section 1.80 of the Rules within thirty (30) calendar 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 enforcement pursuant to section 504(a) of the Act.¹⁵ 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 with any questions regarding payment procedures. Mr. Fleurinor shall also send electronic notification on the date said payment is made to SCR-Response@fcc.gov.

8. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by both First Class and Certified Mail Return Receipt Requested to Whisler Fleurinor at his address of record and to his attorney, Lewis H. Goldman, P.C., 45 Dudley Court, Bethesda, MD 20814.

FEDERAL COMMUNICATIONS COMMISSION

Dennis P. Carlton
Regional Director, South Central Region
Enforcement Bureau

¹⁴ 47 U.S.C. §§ 301, 503(b); 47 C.F.R. §§ 0.111, 0.204, 0.311, 0.314, 1.80(f)(4).

¹⁵ 47 U.S.C. § 504(a).