

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

In the Matter of)	
)	File No.: EB-10-MA-0207
John E. Criteser, Jr.)	
)	NAL/Acct. No.: 201232600002
Lake Park, Florida)	
)	FRN: 0016075715
)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: October 21, 2011

Released: October 21, 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 John E. Criteser, Jr. (“Mr. Criteser”) 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 95.1 MHz in Lake Park, Florida. We conclude that Mr. Criteser is apparently liable for a forfeiture in the amount of fifteen thousand dollars (\$15,000).

II. BACKGROUND

2. On December 13, 2010, and July 8, 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 95.1 MHz to Mr. Criteser’s residence in Lake Park, Florida. 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

3. Also, on July 8, 2011, agents from the Miami Office knocked on the door of Mr. Criteser’s residence and requested to inspect the radio station located on the premises. The individual who answered the door called for “John” and shut the door, during which time the agents observed that the radio station on 95.1 MHz ceased operation. Approximately 15 minutes later and after repeated knocks, Mr. Criteser opened the door, identified himself, and admitted to agents that he was operating a radio station on 95.1 MHz.

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 μ V/m at three meters. 47 C.F.R. § 15.239.

III. DISCUSSION

4. Section 503(b) of the Act³ 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. 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 sections 312 and 503(b) of the Act,⁵ 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

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.⁹ On December 13, 2010, and July 8, 2011, Mr. Criteser operated an unlicensed radio station on the frequency 95.1 MHz from his residence in Lake Park, Florida. A review of the Commission’s records revealed that Mr. Criteser did not have a license to operate a radio station on this frequency at this location. Moreover, on July 8, 2011, Mr. Criteser admitted operating the radio station from his residence. Because Mr. Criteser operated this station consciously on more than one day, we find that the apparent violations were not only willful, but also repeated. Based on the evidence before us, we find that Mr. Criteser 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 \$10,000.¹⁰ 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

³ 47 U.S.C. § 503(b).

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 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 . . .”).

⁶ 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.*”).

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

⁹ 47 U.S.C. § 301.

¹⁰ *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.

such matters as justice may require.¹¹ Here, we find that consideration of the foregoing statutory factors justifies an upward adjustment of the base forfeiture amount. Commission records show that the Miami Office hand delivered a Notice of Unlicensed Operation (“*NOUO*”) to Mr. Criteser for operation of an unlicensed station on the frequency 91.5 MHz at the same location on May 22, 2007.¹² The fact that Mr. Criteser continued to operate an unlicensed station after being put on notice four years earlier that his unlicensed operation contravened the Act, the Commission’s rules, and related Commission orders demonstrates a deliberate disregard for the Commission’s requirements. Thus, we find that an upward adjustment in the forfeiture amount of \$5,000 is warranted.¹³ Applying the *Forfeiture Policy Statement*, section 1.80 of the Rules, and the statutory factors to the instant case, we conclude that Mr. Criteser is apparently liable for a forfeiture of \$15,000.

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, 0.311, 0.314, and 1.80 of the Commission’s rules, John E. Criteser, Jr. 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.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, John E. Criteser, Jr., **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, John E. Criteser, Jr. will send electronic notification on the date said payment is made to SCR-Response@fcc.gov.

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

¹¹ 47 U.S.C. § 503(b)(2)(E).

¹² *John E. Criteser, Jr.*, Notice of Unlicensed Operation (Enf. Bur., Miami Office, dated May 22, 2007).

¹³ See *Robert Brown*, Forfeiture Order, 26 FCC Rcd 6854 (Enf. Bur. 2011), *aff’g* Notice of Apparent Liability for Forfeiture, 25 FCC Rcd 13740 (Enf. Bur. 2010) (petition for reconsideration pending); *Loyd Morris*, Forfeiture Order, 26 FCC Rcd 6856 (Enf. Bur. 2011), *aff’g* Notice of Apparent Liability for Forfeiture, 25 FCC Rcd 13736 (Enf. Bur. 2010) (petition for reconsideration pending).

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

¹⁵ See 47 C.F.R. § 1.1914.

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, PO Box 520617, Miami, Florida 33152 and include the NAL/Acct. No. referenced in the caption. In addition, John E. Criteser, Jr., 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 John E. Criteser, Jr. 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).