

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

In the Matter of	)	
	)	File Number: EB-09-SF-0031
Daniel K. Roberts	)	
a/k/a "Monkey Man"	)	NAL/Acct. No.: 200932960004
a/k/a "Monkey"	)	FRN: 0019070572
	)	
San Francisco, California	)	

**FORFEITURE ORDER**

**Adopted: October 19, 2011**

**Released: October 21, 2011**

By the Regional Director, Western 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) to Daniel K. Roberts a/k/a "Monkey Man" a/k/a "Monkey" ("Roberts") in San Francisco, California, for willfully and repeatedly violating section 301 of the Communications Act of 1934, as amended ("*Act*"), by operating an unlicensed radio broadcast station.<sup>1</sup>

**II. BACKGROUND**

2. Roberts is the operator of Pirate Cat Radio ("*PCR*") which operated a radio broadcast station without a license issued by the FCC on 87.9 MHz in San Francisco, California. Roberts is also the executive of the Pirate Cat Café and Studio located at 2781 21<sup>st</sup> Street, San Francisco, California. In 2008, Roberts began operating PCR from a radio studio located at the Pirate Cat Café and Studio. At the time the *NAL* was issued, the PCR website ([www.piratecatradio.com](http://www.piratecatradio.com)) prominently featured Roberts, and PCR described itself as an "unlicensed low powered community radio" located at the same address as the Pirate Cat Café and Studio.<sup>2</sup> The Enforcement Bureau's San Francisco Office issued numerous warnings and Notices of Unlicensed Operation ("*NOUOs*") to Roberts and PCR concerning unlicensed radio operations, which detailed the potential penalties for operating an unlicensed radio station and for further violations of the Act and the Commission's rules ("*Rules*").<sup>3</sup>

3. On April 28, 2009, and on April 29, 2009, agents from the San Francisco Office, using radio direction-finding methods, determined that the transmission source of a radio signal on 87.9 MHz was an antenna on the roof of a residence at 841 Corbett Avenue, San Francisco, California. The agents

---

<sup>1</sup> See 47 U.S.C. § 301.

<sup>2</sup> Subsequent to the issuance of the *NAL*, the PCR website made various changes and eliminated much of the language that evidenced PCR and Roberts' control of the PCR broadcasts on 87.9 MHz. The PCR broadcast on 87.9 MHz also ceased.

<sup>3</sup> See, e.g., Notice of Unlicensed Operation to Daniel K. Roberts (San Francisco Office, March 7, 2006); Notice of Unlicensed Operation to Jason Seifert (San Francisco Office, April 20, 2006); Notice of Unlicensed Operation to Josh Goodwin (San Francisco Office, June 27, 2006); Notice of Unlicensed Operation to Alexander Ness (San Francisco Office, March 29, 2007); On-Scene Notice of Unlicensed Operation (San Francisco Office, August 18, 2008).

took field strength measurements of the signals and determined that the signals being broadcast exceeded the limits for operation under Part 15 of the Rules<sup>4</sup> and therefore required a license. A review of the Commission's records found no evidence of a Commission authorization for this operation on 87.9 MHz in San Francisco, California. Also on April 29, 2009, the agents observed Roberts operating and controlling the unlicensed radio station on 87.9 MHz from the Pirate Cat Café and Studio at 2781 21<sup>st</sup> Street, San Francisco, California. The agents subsequently monitored PCR and located the signal again emanating from 841 Corbett Avenue, San Francisco, California. The agents recognized Roberts' voice and identified Roberts as the voice on the unlicensed transmissions on 87.9 MHz.

4. On August 31, 2009, the Enforcement Bureau's San Francisco Office issued a *Notice of Apparent Liability for Forfeiture* ("NAL") in the amount of \$10,000 to Roberts, finding that Roberts apparently willfully and repeatedly violated section 301 of the Act by operating an unlicensed broadcast station on 87.9 MHz in San Francisco, California.<sup>5</sup> After the issuance of the NAL, the broadcasts of PCR on 87.9 MHz in San Francisco ceased. Roberts filed a response to the NAL on October 23, 2009,<sup>6</sup> after receiving an extension of time from the San Francisco Office to respond. In his *Response*, Roberts acknowledges his involvement with PCR, but argues that he is not associated with the transmissions of PCR. Roberts also argues that he is "financially unable" to pay the forfeiture amount.

### III. DISCUSSION

5. The proposed forfeiture in this case was assessed in accordance with section 503(b) of the Act, section 1.80 of the Commission's rules, and the Commission's forfeiture guidelines set forth in its *Forfeiture Policy Statement*.<sup>7</sup> Section 503(b)(2)(E) 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>8</sup>

6. 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.<sup>9</sup> Section 3(33) of the Act defines "communications by radio" as "the transmission by radio of writing, signs, signals, pictures, and sounds of all kinds, including all instrumentalities, facilities, apparatus, and services (among other things,

---

<sup>4</sup> Section 15.239 of the Rules provides that non-licensed broadcasting in the 88 to 108 MHz band is permitted only if the field strength of the transmission does not exceed 250  $\mu\text{V}/\text{m}$  at three meters. See 47 C.F.R. § 15.239. Fundamental emissions from intentional radiators are not permitted in the band 76 to 88 MHz. See 47 C.F.R. § 15.209(a). On April 28, 2009, the measurements indicated that the signal was more than 4,000 times greater than the maximum permissible level for a non-licensed Part 15 transmitter in the 88 to 108 MHz band and more than 10,000 times greater than the maximum permissible level in the 76 to 88 MHz band. On April 29, 2009, the measurements indicated that the signal was more than 3,000 times greater than the maximum permissible level for a non-licensed Part 15 transmitter in the 88 to 108 MHz band and more than 8,000 times greater than the maximum permissible level in the 76 to 88 MHz band.

<sup>5</sup> See *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200932960004 (Enf. Bur., Western Region, San Francisco Office rel. Aug. 31, 2009); 47 U.S.C. § 301.

<sup>6</sup> See Response of Daniel K. Roberts, filed October 23, 2009 ("*Response*").

<sup>7</sup> See *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.

<sup>8</sup> See 47 U.S.C. § 503(b)(2)(E).

<sup>9</sup> See 47 U.S.C. § 301.

the receipt, forwarding, and delivery of communications) incidental to such transmission.”<sup>10</sup> After issuing numerous warnings and notices to Roberts, the San Francisco Office, using radio frequency direction finding equipment, on April 28 and 29, 2009, located the source of the transmission of Roberts’ PCR broadcasts to 841 Corbett Avenue, San Francisco, California. The San Francisco agents determined that the transmission originated at Roberts’ PCR café, and that Roberts exercised control over the broadcast. The San Francisco Office therefore found that Roberts apparently willfully and repeatedly violated section 301 of the Act by operating an unlicensed broadcast station on 87.9 MHz in San Francisco, California.<sup>11</sup>

7. In his *Response*, Roberts “acknowledges his involvement in extra-legal broadcasting years ago”; however, he denies that “transmissions have ever emanated from the location admittedly under his control, the Pirate Cat Radio café and studio at 2781 21<sup>st</sup> Street in San Francisco.”<sup>12</sup> Roberts admits that “on April 28 and 29, 2009, when agents observed [him] at the Pirate Cat Radio address, [he] was operating the board, mixers and espresso machine.”<sup>13</sup> He denies that he “was ‘operating’ or ‘controlling’ any ‘unlicensed radio station on 87.9 MHz’ or any transmission of energy on any frequency.”<sup>14</sup> Roberts alleges that the internet streamed program service from PCR is downloaded and broadcast by third parties. Finally, Roberts acknowledges that the PCR website described his “facility as [an] ‘unlicensed low powered community radio’”; and that “[t]his statement does not currently appear on the website, and is inaccurate because Pirate Cat Radio, while certainly unlicensed, has never originated broadcast transmissions or extra legal transmission of any kind.”<sup>15</sup>

8. Roberts mistakenly argues that a violation of section 301 of the Act requires that the violator be actually operating a transmitter at the location of the studio and nothing less. This is incorrect. For the purposes of section 301,<sup>16</sup> 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>17</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>18</sup> but also operation of a radio station generally.<sup>19</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>20</sup>

---

<sup>10</sup> 47 U.S.C. § 153(33).

<sup>11</sup> See 47 U.S.C. § 301.

<sup>12</sup> *Response* at 1.

<sup>13</sup> *Id.*, Roberts Affidavit at 3.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> See 47 U.S.C. § 301.

<sup>17</sup> See *Campbell v. United States*, 167 F.2d 451, 453 (5<sup>th</sup> 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>18</sup> *Id.*

<sup>19</sup> See *id.* See also 47 U.S.C. § 307(c)(1).

<sup>20</sup> *Revision of Rules and Policies for the Direct Broadcast Satellite Service*, 11 FCC Rcd 9712, 9747 (1995), *aff’d sub nom. DIRECTV, Inc. v FCC*, 110 F.3d 816 (D.C. Cir 1997). See, e.g., *Vicot Chery*, Notice of Apparent Liability for

9. Roberts also portends that he had no control over the illegal transmission of PCR. We disagree. Despite the post-NAL alterations to the PCR website, Roberts, as the operator of Pirate Cat Radio and the Pirate Cat Radio website, held himself out as the manager of Pirate Cat Radio and held Pirate Cat Radio out as a broadcast station, not just as a source of internet programming.<sup>21</sup> Roberts solicited funds on the PCR website stating that “[d]onations go towards monthly station cost of running the FM transmitter and help Pirate Cat Radio buy new radio station equipment.”<sup>22</sup> Roberts also stated on the PCR website “that Title 47 Section 73.3542 of the U.S. Code of federal regulations currently allows Pirate Cat Radio 87.9fm to legally broadcast with out [sic] a formal licence [sic] from the FCC.”<sup>23</sup> In addition, in August 2009, Roberts accepted a certificate from the San Francisco Board of Supervisors which recognized Pirate Cat for its "trailblazing efforts toward freeing the airwaves from corporate control, providing the community with training in radio broadcast skills, empowering voices ignored by traditional media outlets, and contributing to the advancement of the city's coffee culture.”<sup>24</sup>

10. On October 31, 2009, Roberts admitted operation of PCR as an unlicensed radio broadcast station, when, in response to the *NAL*, Roberts issued a press release stating that “Pirate Cat Radio, a volunteer-run, community broadcasting organization operating out of the Pirate Cat Café in San Francisco’s Mission district, has ceased its terrestrial broadcast on 87.9FM in response to the

---

Forfeiture, 25 FCC Rcd 14596 (Enf. Bur. 2010).

<sup>21</sup> See <http://www.piratecatradio.com/about/php> (last visited July 28, 2008) (“Pirate Cat is an unlicensed low powered community radio station, broadcasting on 87.9 megahertz.”); [http://articles.sfgate.com/2009-01-05/entertainment/17197051\\_1\\_pirate-radio-monkey-radio-station](http://articles.sfgate.com/2009-01-05/entertainment/17197051_1_pirate-radio-monkey-radio-station) (last visited Nov. 8, 2010) (“Monkey has operated Pirate Cat Radio in various locations for 12 years and opened the café in March with a novel business plan. He oversees a staff of 52 disc jockeys who pay a \$30 monthly fee to do their air shifts, in addition to time they spend volunteering at the coffee shop, which is supposed to underwrite the radio station. . . . The FCC routinely writes him up for operating without a license. He pulls out the latest citation and field agent's business card. He submitted his most recent application for a license on one of the same napkins he used to give the guitarist his phone number. ‘I see these like fix-it tickets,’ he says. On the station's Web site ([www.piratecatradio.com](http://www.piratecatradio.com)), Monkey invokes President Bush's war on terror and a provision of federal regulations that allows for temporary licenses in the face of national emergencies. . . . He broadcasts at 87.9 on the FM dial with a beefy 1,200-watt signal currently booming his station as far south as Gilroy. He will be moving the secret location of his transmitter soon and expects his coverage to suffer. Changing transmitter sites is one of the occupational hazards of pirate radio. Pirate Cat Radio simulcasts in Los Angeles and Berlin, although Monkey allows that the Los Angeles transmitter covers only about a five-block radius in the Silver Lake neighborhood because of an interference issue raised by a Christian television station, and the Berlin simulcast happens only when his associates over there remember to turn on the equipment.”); <http://www.sfweekly.com/2010-05-26/news/the-radio-pirate-goes-legit/> (last visited Nov. 8, 2010) (SF Weekly article published May 26, 2010, about Roberts’ history since 2003 as a pirate radio broadcaster).

<sup>22</sup> <http://www.piratecatradio.com> (last visited Oct. 29, 2009).

<sup>23</sup> <http://www.piratecatradio.com/about/php> (visited July 28, 2008, and Nov. 3, 2009). See <http://web.archive.org/web/20080512012346/http://www.piratecatradio.com/about.php#leg> (last visited Aug. 16, 2010). As stated in the *NAL*, the PCR website also mistakenly claimed its unlicensed operation is sanctioned by section 73.3542 of the Rules, 47 C.F.R. § 73.3542. We note that authority to operate pursuant to section 73.3542 must be granted by the FCC, and that the burden is on the applicant to show the required “extraordinary circumstances” to support such a grant. See *A-O Broadcasting Corporation*, Memorandum Opinion and Order, 23 FCC Rcd 603, 614 (2008). There is no record that Roberts and PCR have ever received such a grant of authority from the Commission. Additionally, the frequency used without authority by Roberts and PCR is 87.9 MHz, which is not allocated to the FM broadcast band. See 47 C.F.R. § 73.201.

<sup>24</sup> <http://www.sfweekly.com/content/printVersion/1993091/> (last visited Nov. 8, 2010). See also <http://www.radiosurvivor.com/tag/san-francisco/> (last visited Aug. 16, 2010).

latest demands of the Federal Communications Commission.”<sup>25</sup> Concurrent with the issuance of Roberts’ press release, broadcasts of PCR on 87.9 MHz in the San Francisco area did cease. Based on the evidence before us, for the purposes of section 301 of the Act, we find that Roberts operated Pirate Cat Radio without a license on 87.9 MHz in San Francisco, California, on April 28 and 29, 2009.<sup>26</sup>

11. Roberts also argues that he is unable to pay the proposed forfeiture amount. However, Roberts has failed to produce any documentation to support this request. As stated in the *NAL*, we “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>27</sup> As Roberts failed to provide any basis or support for his claim of inability to pay the proposed forfeiture, we deny his request to reduce the proposed forfeiture.

12. We have examined the *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 Roberts willfully and repeatedly violated section 301 of the Act. Considering the entire record and the factors listed above, we find that neither reduction nor cancellation of the proposed \$10,000 forfeiture is warranted. Therefore, we affirm the *NAL*’s finding that Roberts willfully and repeatedly violated section 301 of the Act, and assess a \$10,000 forfeiture for that violation.

#### IV. ORDERING CLAUSES

13. **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 and 1.80(f)(4) of the Commission’s Rules, Daniel K. Roberts a/k/a “Monkey Man” a/k/a “Monkey” **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of \$10,000 for willfully and repeatedly violating section 301 of the Act.<sup>28</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 Forfeiture 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.<sup>29</sup> Payment of the forfeiture must be made by check or similar instrument, payable to

---

<sup>25</sup> <http://www.piratecatradio.com/wordpress/?p=14816> (last visited Nov. 3, 2009). *See* <http://missionmission.wordpress.com/> (last visited Aug. 16, 2010) (press release issued by Pirate Cat Radio on October 31, 2009). In that press release, Pirate Cat Radio stated that it ceased its terrestrial broadcast on 87.9FM in response to the FCC’s proposed \$10,000 fine for violating Section 301 of the Act, effectively ending PCR’s 13-year run on the air. The press release also stated that “PCR can continue as an internet only station and the café/studio on 21<sup>st</sup> will continue to operate, but at least for the time being, but it cannot safely broadcast over the terrestrial FM band without possibly jeopardizing its volunteers and supporters . . . .” The article concluded with a quote from Roberts, who stated: “we made a collective decision that Pirate Cat Radio must come off the public airwaves, until some method is found to change the law or get it authorized under existing law.” *See also* <http://www.missionmission.org/2009/11/02/pirate-cat-radio-fined-10k-and-ceases-fm-broadcast/> (last visited Aug. 16, 2010).

<sup>26</sup> The foregoing facts also directly undercut Roberts’ unconvincing and unsubstantiated assertion that the transmissions detected by the agents were probably third parties involved in airing internet streamed program service from PCR.

<sup>27</sup> *NAL*, ¶ 12.

<sup>28</sup> *See* 47 U.S.C. §§ 301, 503(b); 47 C.F.R. §§ 0.111, 0.204, 0.311, 1.80(f)(4).

<sup>29</sup> *See* 47 U.S.C. § 504(a).

the order of the Federal Communications Commission. The payment must include the NAL/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. 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. Daniel K. Roberts a/k/a “Monkey Man” a/k/a “Monkey” will also send electronic notification on the date said payment is made to [WR-Response@fcc.gov](mailto:WR-Response@fcc.gov).

15. **IT IS FURTHER ORDERED** that a copy of this Forfeiture Order shall be sent by First Class Mail and by Certified Mail, Return Receipt Requested, to Daniel K. Roberts a/k/a “Monkey Man” a/k/a “Monkey” at his address of record; and to his counsel of record, Michael Couzens, 6536 Telegraph Avenue, Suite 8201, Oakland, CA, 94609.

FEDERAL COMMUNICATIONS COMMISSION

Rebecca L. Dorch  
Regional Director, Western Region  
Enforcement Bureau