

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

In the Matter of	)	
	)	
Bernabe Moreno	)	File No: EB-10-NY-0185
	)	NAL/Acct. No: 201132380004
Passaic, New Jersey	)	FRN: 0019865922
	)	
	)	

**NOTICE OF APPARENT LIABILITY FOR FORFEITURE**

**Adopted:** February 10, 2011

**Released:** February 11, 2011

By the District Director, New York Office, Northeast Region, Enforcement Bureau:

**I. INTRODUCTION**

1. In this *Notice of Apparent Liability for Forfeiture* (“NAL”), we find that Bernabe Moreno (“Mr. Moreno”), apparently willfully and repeatedly violated Section 301 of the Communications Act of 1934, as amended (“Act”),<sup>1</sup> by operating an unlicensed radio transmitter on the frequency 102.3 MHz in Passaic, New Jersey. We conclude that Mr. Moreno is apparently liable for a forfeiture in the amount of ten thousand dollars (\$10,000).

**II. BACKGROUND**

2. On April 3 and April 7, 2010, in response to a complaint, agents of the Enforcement Bureau’s New York Office (“New York Office”) used mobile direction-finding techniques to monitor the frequency 102.3 MHz in Passaic, New Jersey, and determined the source of the transmissions to be a radio station operating from a building located at 251 Monroe Street. The agents observed an FM broadcast antenna on the roof of the building and a coaxial cable going from the antenna on the roof to the second floor of the building. The agents subsequently took field strength measurements and determined that the signals being broadcast exceeded the limits for operation under Part 15 of the Commission’s rules (“Rules”)<sup>2</sup> and therefore required a license. A review of the Commission’s records revealed no evidence of a Commission authorization for operation of a radio station on 102.3 MHz in Passaic, New Jersey.

3. On April 7, 2010, agents from the New York Office returned to the building on 251 Monroe Street to conduct an inspection of the radio station and knocked on the door of Suite 201. A male answered the door and identified himself as Bernabe Moreno. Mr. Moreno told the agents that he owns and operates the station on 102.3 MHz at this location. The agents observed that the station was active at the time of the inspection until Mr. Moreno turned off the station at the agents’ request. The agents verbally warned Mr. Moreno about the consequences of continued operation of an unlicensed radio

<sup>1</sup> 47 U.S.C. § 301.

<sup>2</sup> 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. Measurements showed that the field strength of the station’s signal exceeded the permissible level for a non-licensed Part 15 transmitter.

station and provided him with a written Notice of Unlicensed Operation, requiring him to cease operation of the station.

### 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.<sup>3</sup> The term “willful” as used in Section 503(b) of the Act has been interpreted to mean simply that the acts or omissions are committed knowingly.<sup>4</sup> The term “repeated” means the commission or omission of such act more than once or for more than one day.<sup>5</sup>

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.<sup>6</sup> Agents determined that an unlicensed broadcast station operated on 102.3 MHz from Suite 201 at 251 Monroe Street in Passaic, New Jersey on April 3, and April 7, 2010. During an interview with agents on April 7, 2010, Mr. Moreno admitted to operating the radio station at this location. Because Mr. Moreno operated the station knowingly, we find that the apparent violation was willful. Because the operation occurred on more than one day, we find the apparent violation was repeated. Based on the evidence before us, we find that on April 3, and April 7, 2010, Mr. Moreno 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.<sup>7</sup> 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.<sup>8</sup> Applying the *Forfeiture Policy Statement*, Section 1.80, and the statutory factors to the instant case, we conclude that Mr. Moreno is apparently liable for a forfeiture in the amount of \$10,000.

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<sup>3</sup> 47 U.S.C. § 503(b).

<sup>4</sup> Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that “[t]he term ‘willful’, when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act or any rule or regulation of the Commission authorized by this Act....” See, e.g., *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387 (1991); *recon. denied*, 7 FCC Rcd 3454 (1992).

<sup>5</sup>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.”

<sup>6</sup> 47 U.S.C. § 301.

<sup>7</sup> *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> 47 U.S.C. § 503(b)(2)(E).

#### 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, 0.311, 0.314, and 1.80 of the Rules, Bernabe Moreno 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.<sup>9</sup>

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*, Bernabe Moreno **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 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[s] 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.<sup>10</sup> 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. Bernabe Moreno shall send electronic notification on the date said payment is made to [NER-Response@fcc.gov](mailto:NER-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 to Sections 1.80(f)(3) and 1.16 of the Rules. The written statement, if any, must be mailed to Federal Communications Commission, Enforcement Bureau, Northeast Region, New York Office, 201 Varick Street, Suite 1151, New York, NY 10014, and must include the NAL/Acct. No. referenced in the caption. The statement should also be emailed to [NER-Response@fcc.gov](mailto:NER-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.

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<sup>9</sup> 47 U.S.C. §§ 301, 503(b); 47 C.F.R. §§ 0.111, 0.311, 0.314, 1.80.

<sup>10</sup> See 47 C.F.R. § 1.1914.

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 Bernabe Moreno at his address of record.

FEDERAL COMMUNICATIONS COMMISSION

Daniel W. Noel  
District Director  
New York Office  
Northeast Region  
Enforcement Bureau