

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

In the Matter of)	
)	File Numbers: EB-10-SF-0031
Gabriel A. Garcia)	EB-10-SF-0135
)	
San Jose, California)	NAL/Acct. No.: 201132960002
)	FRN: 0020645396
)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: March 9, 2011

Released: March 11, 2011

By the District Director, San Francisco District Office, Western Region, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture (“NAL”), we find that Gabriel A. Garcia (“Garcia”), apparently willfully and repeatedly violated section 301 of the Communications Act of 1934, as amended (“Act”),¹ by operating an unlicensed broadcast station on various FM broadcast band frequencies in San Jose, California.² We conclude that Garcia is apparently liable for a forfeiture in the amount of twenty-five thousand dollars (\$25,000).

II. BACKGROUND

2. On March 12, 2010, the Enforcement Bureau’s San Francisco Office (“San Francisco Office”) received a complaint from the Federal Aviation Administration (“FAA”) of interference to the Aviation Services band from an unlicensed station identifying itself as radio station “KNRG” operating on the frequency 92.9 MHz in San Jose, California. San Francisco agents used radio direction-finding techniques to locate the source of broadcast transmissions on 92.9 MHz to an antenna on the roof of a residence at 243 N. 33rd Street, San Jose, California. The agents took field strength measurements and determined that the signal being broadcast exceeded the limits for operation under Part 15 of the Commission’s rules (“Rules”)³ and therefore required a license. The agents inspected the radio station after obtaining permission from the landlord of the residence. During the inspection, the landlord identified Garcia as the operator of the radio station “KNRG” on 92.9 MHz. Subsequent to the inspection, the operation ceased. A review of the Commission’s records showed no authorization issued to Garcia, or anyone else for operation of a radio station on this frequency at this location. On April 12, 2010, the San

¹ 47 U.S.C. § 301.

² Garcia is the operator of a radio station that has been operating without a license on various FM broadcast band frequencies and at various locations in San Jose, California. The station identifies as “KNRG.” See *infra* ¶¶ 3, 4, and 5.

³ 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. On March 12, 2010, the field strength measurements indicated that the signal was more than 1,957 times greater than the maximum permissible level for a non-licensed Part 15 transmitter.

San Francisco Office issued a Notice of Unlicensed Operation (“NOUO”) to Garcia for operating an FM broadcast station on frequency 92.9 MHz from 243 N. 33rd Street, San Jose, California, without a license.⁴ The NOUO warned Garcia that his operation of an unlicensed radio station violated the Act, and detailed the penalties for continued operation or further violations of the Act or the Rules.

3. On May 6, 2010, in response to a complaint of an unlicensed radio station operating on 93.7 MHz in San Jose, California, agents from the San Francisco Office used radio direction-finding techniques to locate the source of broadcast transmissions on 93.7 MHz to a residence located at 10142 Sylvandale Avenue, San Jose, California. The agents took field strength measurements and determined that the signal being broadcast exceeded the limits for operation under Part 15 of the Rules⁵ and therefore required a license. Searches of the Commission databases found no evidence of a Commission authorization for this operation on 93.7 MHz in San Jose, California. Based on previous encounters and California Department of Motor Vehicle identification, San Francisco agents recognized and identified Garcia as the operator of the radio station. Subsequent to an attempted inspection, the operation ceased. On May 14, 2010, a second NOUO was issued to Garcia for operating an unlicensed FM broadcast station on frequency 93.7 MHz from 10142 Sylvandale Avenue in San Jose, California.⁶

4. On June 15, 2010, in response to additional complaints from the FAA about an unlicensed station identifying itself as “KNRG” operating on 92.9 MHz in San Jose, California, agents from the San Francisco Office used radio direction-finding techniques to locate the source of broadcast transmissions on 92.9 MHz to the same residence at 10142 Sylvandale Avenue, San Jose, California and again identified Garcia as the operator. The agents took field strength measurements and determined that the signal being broadcast exceeded the limits for operation under Part 15 of the Rules⁷ and therefore required a license. Searches of the Commission databases found no evidence of a Commission authorization for this operation on 92.9 MHz in San Jose, California. Prior to leaving the site, the San Francisco agents issued a third on-scene NOUO to Garcia for operating an unlicensed FM broadcast station on 92.9 MHz from 10142 Sylvandale Avenue in San Jose, California.⁸ Subsequent to an attempted inspection, the operation ceased.

5. On July 23, 2010, in response to a complaint of an unlicensed station operating on 104.3 MHz in San Jose, California, agents from the San Francisco Office used radio direction-finding techniques to locate the source of broadcast transmissions on 104.3 MHz to a residence at 15047 Joanne Avenue, San Jose, California. The agents made field strength measurements and determined that the signal being broadcast exceeded the limits for operation under Part 15 of the Rules⁹ and therefore required a license. Again, the station identified as “KNRG.” While agents were on the scene, they observed an individual leave the residence and then quickly return to the residence. The agents identified the individual as Garcia. A review of the Commission’s records revealed that Garcia did not have a license for the operation of a radio station on 104.3 MHz in San Jose, California. Subsequently, the operation ceased. On

⁴ *Gabriel A. Garcia*, Notice of Unlicensed Operation (Enf. Bur. San Francisco Office, rel. April 12, 2010).

⁵ *See* 47 C.F.R. § 15.239. On May 6, 2010, the signal strength measurement was more than 3,110 times greater than the maximum permissible level.

⁶ *Gabriel A. Garcia*, Notice of Unlicensed Operation (Enf. Bur. San Francisco Office, rel. May 14, 2010).

⁷ *See* 47 C.F.R. § 15.239. On June 15, 2010, the signal strength measurement was more than 6,770 times greater than the maximum permissible level.

⁸ *Gabriel A. Garcia*, On-Scene Notice of Unlicensed Operation (Enf. Bur. San Francisco Office, issued on-scene June 15, 2010).

⁹ *See* 47 C.F.R. § 15.239. On July 23, 2010, the measurements indicated that the signal strength measurement was more than 2,089 times greater than the maximum permissible level.

August 10, 2010, the San Francisco Office issued a fourth NOUO to Garcia for operating an FM broadcast station on frequency 104.3 MHz from 15047 Joanne Avenue, San Jose, California without a license.¹⁰

III. DISCUSSION

6. 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. The term “willful” as used in section 503(b) has been interpreted to mean simply that the acts or omissions are committed knowingly.¹¹ The term “repeated” means the commission or omission of such act more than once or for more than one day.¹²

7. 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.¹³ As discussed above, on March 12, 2010, May 6, 2010, June 15, 2010, and July 23, 2010, San Francisco agents determined that Garcia was operating a radio station on a frequency in the FM broadcast band without a license. Because Garcia knowingly operated the station, we find that the violations were willful. Moreover, because Garcia’s unlicensed operation occurred on more than one occasion, we find that the violations were repeated. Based on the evidence before us, we find that Garcia apparently willfully and repeatedly violated section 301 of the Act by operating radio transmission equipment without Commission authorization on the frequencies 92.9 MHz, 93.7 MHz, and 104.3 MHz, on March 12, May 6, June 15, and July 23, 2010.

8. 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 \$10,000.¹⁴ 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.¹⁵ We find Garcia’s misconduct particularly egregious because his operation resulted in apparent interference to the FAA’s Aviation Radio Services band. In addition, Garcia’s unlicensed operations continued despite multiple notices and warnings issued by the San Francisco Office.¹⁶ The fact that Garcia continued to operate an unlicensed radio station on several different occasions

¹⁰ *Gabriel A. Garcia*, Notice of Unlicensed Operation (Enf. Bur. San Francisco Office, rel. August 10, 2010).

¹¹ 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).

¹² 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.”

¹³ 47 U.S.C. § 301.

¹⁴ *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.

¹⁵ 47 U.S.C. § 503(b)(2)(E).

¹⁶ See, e.g., *Gabriel A. Garcia*, Notices of Unlicensed Operation (Enf. Bur. San Francisco Office, rel. April 7, 2006; March 29, 2007; April 12, 2010; May 14, 2010; and August 10, 2010); *Gabriel A. Garcia*, On-Scene Notice of Unlicensed Operation (Enf. Bur. San Francisco Office, rel. February 26, 2008; and June 15, 2010). We note that the agents made several attempts to inspect Garcia’s radio station but Garcia denied them access to the equipment.

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with full knowledge that such activity violated the Act and the Rules demonstrates a deliberate disregard for the Commission's requirements. Thus, we find that an upward adjustment in the forfeiture amount of \$15,000 is warranted.¹⁷ Applying the *Forfeiture Policy Statement*, section 1.80 of the Rules, and the statutory factors to the instant case, we conclude that Garcia is apparently liable for a forfeiture in the amount of twenty-five thousand dollars (\$25,000).

IV. ORDERING CLAUSES

9. 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 Rules, Gabriel A. Garcia is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of twenty-five thousand dollars (\$25,000) for violation of section 301 of the Act.¹⁸

10. **IT IS FURTHER ORDERED** that, pursuant to section 1.80 of the Rules within thirty days of the release date of this Notice of Apparent Liability for Forfeiture, Gabriel A. Garcia **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

11. 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 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. 20554.¹⁹ Please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: ARINQUIRIES@fcc.gov with any questions regarding payment procedures. Gabriel A. Garcia shall also send electronic notification to WR-Response@fcc.gov on the date said payment is made.

12. 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 must be mailed to Federal Communications Commission, Enforcement Bureau, Western Region, San Francisco Office, 5653 Stoneridge Drive, Suite 105, Pleasanton, CA 94588-8543 and must include the NAL/Acct. No. referenced in the caption. An electronic copy shall also be sent to WR-Response@fcc.gov.

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Based on the egregious nature of Garcia's conduct, we reserve our right to issue a separate Notice of Apparent Liability for Forfeiture for Garcia's refusal to permit inspection.

¹⁷ See 47 C.F.R. § 1.80(b)(4). See also *Lloyd Morris*, Notice of Apparent Liability for Forfeiture, 25 FCC Rcd 13736 ¶ 10 (Enf. Bur. 2010); *Nounoune Lubin*, Notice of Apparent Liability for Forfeiture, 25 FCC Rcd 12654 (Enf. Bur. 2010).

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

¹⁹ See 47 C.F.R. § 1.1914.

13. 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.

14. **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 Gabriel A. Garcia at his address of record.

FEDERAL COMMUNICATIONS COMMISSION

Thomas N. Van Stavern
District Director
San Francisco District Office
Western Region
Enforcement Bureau