

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

In the Matter of)	
)	
Marckenson Bazile)	File No: EB-10-MA-0116
)	NAL/Acct. No: 201132600003
Miami, Florida)	FRN: 0016893083

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: March 29, 2011

Released: March 29, 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 Marckenson Bazile (“Mr. Bazile”), 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 103.9 MHz from his residence in Miami, Florida. We conclude that Mr. Bazile is apparently liable for a forfeiture in the amount of twenty thousand dollars (\$20,000).

II. BACKGROUND

2. On June 16 and June 29, 2010, 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 103.9 MHz to a residence in Miami, Florida leased by Mr. Bazile. The agents determined that the signals from Mr. Bazile’s leased property exceeded the limits for operation under Part 15 of the Commission’s rules (“Rules”),² and therefore required a license. A review of the Commission’s records revealed that no license or authorization was issued to Mr. Bazile or anyone else to operate a radio station on 103.9 MHz at this location. The agents also found information on the Internet listing an email address with “marcbazile@...” as the contact information for a Disc Jockey on “103.9 PARADIS FM.”³

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

³ On May 25, 2010, agents from the Miami Office met Mr. Bazile while investigating an unlicensed radio station operating on 103.9 MHz from another location in Miami. Mr. Bazile asserted the station was located in a locked garage space that he was subleasing to another person. On June 28, 2010, “T-Pouchon” was listed as a contact for ParadisFM, 103.9. The photograph of the person listed to the side of “T-Pouchon” was the same individual the agents met on May 25, 2010, Mr. Bazile. See www.paradisfm.com, Team Paradis tab. On June 28, 2010, an agent from the Miami Office searched the Internet and found a message posted by Ti_Pouchon at www.sakapfet.com on May 24, 2010 at 05:14 PM which stated: “EVERY SUNDAY AT DECO LOUNGE 10PM TO 4PM, 103.9 PARADIS FM OR GO ONLINE WWW.PARADIS FM .COM REQUEST LINE (786) 955-8892. IF YOU NEED A DJ CALL JOE MIX AT (305) 263-0765.” The agent clicked on the user profile for TI_POUCHON on www.sakapfet.com, which showed the email address marcbazile@yahoo.com.

III. DISCUSSION

3. 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.⁴ 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.⁵ The term “repeated” means the commission or omission of such act more than once or for more than one day.⁶

4. 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.⁷ On June 16 and again on June 29, 2010, Mr. Bazile operated an unlicensed radio station on the frequency 103.9 MHz from his leased residence in Miami, Florida. Information on the Internet also shows that Mr. Bazile served as a DJ for a radio station on the frequency 103.9 MHz. Because Mr. Bazile knowingly operated the station, we find 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 June 16 and June 29, 2010, Mr. Bazile apparently willfully and repeatedly violated section 301 of the Act by operating radio transmission equipment without the required Commission authorization.

5. 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 \$10,000.⁸ 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.⁹

6. Consequently, the \$10,000 base forfeiture amount is subject to adjustment. In this regard, we take into account Mr. Bazile’s previous violations. On November 16, 2007, Mr. Bazile admitted to operating an unlicensed radio station at Port St. Lucie, Florida on August 16 and 17, 2007.¹⁰ The fact that

⁴ 47 U.S.C. § 503(b).

⁵ 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).

⁶ 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.”

⁷ 47 U.S.C. § 301.

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) (“*Forfeiture Policy Statement*”), *recon. denied*, 15 FCC Rcd 303 (1999); 47 C.F.R. § 1.80.

⁹ 47 U.S.C. § 503(b)(2)(E).

¹⁰ Letter from Marckenson Bazile to the Tampa Field Office, dated November 16, 2007. See also *Marckenson Bazile*, Forfeiture Order, 22 FCC Rcd 21448 (Enf. Bur. 2007).

Mr. Bazile continued to operate albeit at a different location after being put on notice that his unlicensed operation contravened the Act, Rules, and related Commission Orders demonstrates a deliberate disregard for the Commission's requirements. Based on the evidence before us, we find that an upward adjustment of \$10,000 is warranted.¹¹ Applying the *Forfeiture Policy Statement*, section 1.80 of the Rules, and the statutory factors to the instant case, we conclude that Mr. Bazile is apparently liable for a forfeiture in the amount of \$20,000.

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, 0.311, 0.314, and 1.80 of the Rules, Marckenson Bazile is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of twenty thousand dollars (\$20,000) for violation of section 301 of the Act.¹²

8. **IT IS FURTHER ORDERED** that, pursuant to section 1.80 of the Rules, within thirty (30) days of the release date of this Notice of Apparent Liability for Forfeiture, Marckenson Bazile **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 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. 20554.¹³ For questions about payment, contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: ARINQUIRIES@fcc.gov. Also, Marckenson Bazile shall send an email 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 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, South Central Region, Miami Office, PO Box 520617, Miami, FL 33152 and must include the NAL/Acct. No. referenced in the caption. The statement shall also be emailed 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-

¹¹ See *Nounoue Lubin*, Notice of Apparent Liability for Forfeiture, 25 FCC Rcd 12654 (Enf. Bur. 2010) (upwardly adjusted by \$10,000 because violator operated an unlicensed radio station on multiple days with full knowledge that such action violated the rules).

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

¹³ See 47 C.F.R. § 1.1914.

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 Marckenson Bazile at his address of record.

FEDERAL COMMUNICATIONS COMMISSION

Stephanie Dabkowski
Resident Agent
Miami Office
South Central Region
Enforcement Bureau