

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

In the Matter of)	
)	File Number: EB-10-SF-0095
Gabriel A. Garcia)	File Number: EB-10-SF-0105
)	
San Jose, California)	NAL/Acct. No.: 201132960003
)	
)	FRN: 0020645396

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: May 4, 2011

Released: May 4, 2011

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

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture, we find that Gabriel A. Garcia ("Garcia"), apparently willfully and repeatedly violated section 303(n) of the Communications Act of 1934, as amended ("Act"),¹ by failing to allow inspection of an unlicensed broadcast station operating on various FM broadcast band frequencies in San Jose, California. We conclude that Garcia is apparently liable for a forfeiture in the amount of twenty-five thousand dollars (\$25,000).

II. BACKGROUND

2. Garcia is the operator of a radio station which has been operating without a license issued by the FCC on various FM broadcast band frequencies and at various locations in San Jose, California. The station identifies as "KNRG." The Enforcement Bureau's San Francisco Office has issued numerous warnings and Notices of Unlicensed Operation ("NOUOs"), as well as a Notice of Apparent Liability to Garcia concerning unlicensed radio operations and detailing the potential penalties for operating an unlicensed radio station, and for further violations of the Act and the Commission's rules ("Rules"), including failure to allow inspection of the unlicensed radio station.²

3. On May 6, 2010, in response to a complaint of an unlicensed radio station identifying itself as "KNRG" 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 to a residence located at 10142 Sylvandale Avenue, San Jose, California. The agents took field strength measurements and determined that the broadcast signal exceeded the limits for operation under Part 15 of the Rules³ and therefore required a

¹ 47 U.S.C. § 303(n).

² See, e.g., *Gabriel A. Garcia*, Notice of Apparent Liability for Forfeiture, DA 11-472 (Enf. Bur., Western Reg., San Francisco Office, Rel. Mar. 11, 2011) ("*Garcia March 2011 NAL*"); *Notice of Unlicensed Operation to Gabriel A. Garcia*, (Enf. Bur. San Francisco Office, August 10, 2010 (EB-10-SF-0135); May 14, 2010 (EB-10-SF-0095); April 12, 2010 (EB-10-SF-0031); March 29, 2007 (EB-07-SF-0045); and April 7, 2006 (EB-06-SF-0037)); *On-Scene Notice of Unlicensed Operation* (San Francisco Office, June 15, 2010 (EB-10-SF-0105) and February 26, 2008 (EB-08-SF-0025)).

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

license. A review of the Commission's records showed no authorization issued to Garcia or anyone else for operation of a radio station on 93.7 MHz in San Jose, California. San Francisco agents attempted to inspect the radio station, but their request was refused by the operator. Based on prior encounters,⁴ San Francisco agents recognized and identified Garcia as the operator of the radio station. The agents issued an on-scene NOUO to "KNRG" and Garcia on May 6, 2010, which in addition to notifying Garcia that his radio station operation must be licensed and that operation without a license violates section 301 of the Act, specifically noted Garcia's "refusal to allow an inspection of your radio equipment in violation of section 303(n) of the Communications Act of 1934, as amended" and warned of various penalties, including forfeiture, for refusal to allow inspection. On May 14, 2010, a formal 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.⁵ The formal NOUO warned Garcia that his operation of an unlicensed radio station violated the Act, detailed the penalties for continued operation or further violations of the Act or the Rules, and included information on the authority of the FCC to inspect all radio installations required to be licensed by the Act.

4. On June 15, 2010, in response to 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 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 Rules⁶ 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. San Francisco agents attempted to inspect the radio station. Garcia refused and stated to the agents, "Do you want to get shot?"⁷ Prior to leaving the site, the San Francisco agents issued another on-scene NOUO to Garcia for operating an unlicensed FM broadcast station, this time on 92.9 MHz, from 10142 Sylvandale Avenue in San Jose, California, which again specifically noted Garcia's "refusal to allow an inspection of your radio equipment in violation of section 303(n)" of the Act and warned of various penalties, including forfeiture, for refusal to allow inspection.⁸

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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. On May 6, 2010, the signal strength measurement was more than 3,110 times greater than the maximum permissible level. On March 11, 2011, Garcia was issued a Notice of Apparent Liability for willfully and repeatedly operating an unlicensed broadcast station in violation of section 301 of the Act. See *Garcia March 2011 NAL*

⁴ On April 12, 2010, the San Francisco Office issued a 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. *Gabriel A. Garcia*, Notice of Unlicensed Operation (Enf. Bur. San Francisco Office, rel. April 12, 2010). The NOUO warned Garcia that his operation of an unlicensed radio station violated the Act, detailed the penalties for continued operation or further violations of the Act or the Rules, and included information on the authority of the FCC to inspect all radio installations required to be licensed by the Act. See also *supra* note 2.

⁵ *Gabriel A. Garcia*, Notice of Unlicensed Operation (Enf. Bur. San Francisco Office, rel. May 14, 2010).

⁶ 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.

⁷ The San Francisco agents left the premises and reported Garcia to the San Jose Police Department.

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

III. DISCUSSION

5. 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.⁹ 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.¹⁰ 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 Act¹¹ and the Commission has so interpreted the term in the section 503(b) context.¹² The Commission may also assess a forfeiture for violations that are merely repeated, and not willful.¹³ “Repeated” means that the act was committed or omitted more than once, or lasts more than one day.¹⁴

6. Section 303(n) of the Act states that the Commission has the “authority to inspect all radio installations associated with stations required to be licensed by any Act.”¹⁵ 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.¹⁶ San Francisco agents determined that Garcia was operating a radio station on a frequency in the FM broadcast band without a license in violation of section 301 of the Act. As discussed above, on May 6, 2010, and June 15, 2010, Garcia refused to allow the San Francisco agents to inspect his unlicensed and unauthorized radio station. Garcia had notice that refusal to allow an inspection of the radio station violated section 303(n) of the Act. Because Garcia consciously and deliberately refused to allow the requested inspections of the station, we find that the violations of section 303(n) of the Act were willful. Moreover, because Garcia refused to allow inspection of the radio station on more than one occasion, we find that the violations of section 303(n) of the Act were repeated. Based on

⁹ 47 U.S.C. § 503(b).

¹⁰ 47 U.S.C. § 312(f)(1).

¹¹ 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 ...”).

¹² 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.*”).

¹³ 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).

¹⁴ *Southern California Broadcasting Co.*, 6 FCC Rcd at 4388, ¶ 5; *Callais Cablevision, Inc.*, 16 FCC Rcd at 1362, ¶ 9.

¹⁵ 47 U.S.C. § 303(n) (The Commission shall “[h]ave authority to inspect all radio installations associated with stations required to be licensed by any Act, or which the Commission by rule has authorized to operate without a license under section 307 (e)(1) of this title, or which are subject to the provisions of any Act, treaty, or convention binding on the United States, to ascertain whether in construction, installation, and operation they conform to the requirements of the rules and regulations of the Commission, the provisions of any Act, the terms of any treaty or convention binding on the United States, and the conditions of the license or other instrument of authorization under which they are constructed, installed, or operated.”).

¹⁶ 47 U.S.C. § 301.

the evidence before us, we find that Garcia apparently willfully and repeatedly violated section 303(n) of the Act by refusing to allow inspection of radio transmission equipment on May 6, 2010, and June 15, 2010.

7. Pursuant to the Commission's *Forfeiture Policy Statement* and section 1.80 of the Rules, the base forfeiture amount for failure to allow inspection of radio equipment is \$7,000.¹⁷ 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.¹⁸ We find Garcia's misconduct particularly egregious because he had been warned several times that failure to allow inspection violated the Communications Act, and threatened to shoot the FCC agents during the June 15, 2010 attempted inspection.¹⁹ Thus, we find that upward adjustments to \$10,000 for the May 6, 2010, apparent violation and \$15,000 for the June 15, 2010, apparent violation are warranted.²⁰ 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 total forfeiture in the amount of twenty-five thousand dollars (\$25,000).

IV. ORDERING CLAUSES

8. 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 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 303(n) of the Act.²¹

9. **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.

10. 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. 20554.²² Please contact the Financial Operations Group Help Desk at 1-877-480-

¹⁷ *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.

¹⁸ 47 U.S.C. § 503(b)(2)(E).

¹⁹ *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).

²⁰ *See* 47 C.F.R. § 1.80(b)(4).

²¹ 47 U.S.C. §§ 303(n), 503(b); 47 C.F.R. §§ 0.111, 0.204, 0.311, 0.314, 1.80.

²² *See* 47 C.F.R. § 1.1914.

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.

11. 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.

12. 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.

13. **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