

In the Matter of	)	
	)	File No: EB-10-NY-0486
Recardo Millwood	)	
	)	NAL/Acct. No: 201132380005
Bronx, New York	)	
	)	FRN: 0020635678
	)	

**Released:** May 12, 2011

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The agents also 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") and therefore required a license.<sup>3</sup> A review of the Commission's records revealed no Commission authorization for operation of a radio station on 88.9 MHz at or near this location in Bronx, New York.

5. On October 15, 2010, an agent from the New York Office returned to the building at 3870 White Plains Road to conduct another station inspection. The agent was met by the station's operator, who reported that the station was operating only via the Internet, which was consistent with the agent's findings that the station was off the air at the time. The station operator contacted Mr. Millwood by phone and the agent spoke to Mr. Millwood, who again identified himself as the station owner. The agent again verbally warned Mr. Millwood that a license was required for over-the-air operation of the station and reminded him of the potential penalties for such a violation.

6. On October 29, 2010, and November 3, 2010, agents from the New York Office again used mobile direction-finding techniques to monitor the frequency 88.9 MHz in Bronx, New York, and determined the source of the transmissions to be a radio station identifying as "Sela Radio" and operating from 3870 White Plains Road. The agents also took field strength measurements and determined that the signals being broadcast exceeded the limits for operation under Part 15 of the Rules and therefore required a license.<sup>4</sup> A review of the Commission's records revealed no Commission authorization for operation of a radio station on 88.9 MHz at or near this location in Bronx, New York.

### III. DISCUSSION

7. 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>5</sup> 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.<sup>6</sup> The legislative history to section 312(f)(1) of the Act clarifies that this definition of willful applies to both section 312 and 503(b) of the Act<sup>7</sup> and the Commission has so interpreted the term in the section 503(b) context.<sup>8</sup> The Commission may also assess a forfeiture for violations that are merely repeated, and not willful.<sup>9</sup> The term "repeated" means the commission or omission of such act more than once or for more than one day.<sup>10</sup>

<sup>3</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.

<sup>4</sup> *Id.*

<sup>5</sup> 47 U.S.C. § 503(b).

<sup>6</sup> 47 U.S.C. § 312(f)(1).

<sup>7</sup> H.R. Rep. No. 97-765, 97<sup>th</sup> 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 ...").

<sup>8</sup> 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.*"), *recon. denied*, 7 FCC Rcd 3454 (1992).

<sup>9</sup> See, e.g., *Callais Cablevision, Inc.*, Notice of Apparent Liability for Monetary Forfeiture, 16 FCC Rcd 1359, 1362

8. 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>11</sup> Agents determined that an unlicensed radio station operated on 88.9 MHz from 3870 White Plains Road on October 6, 14, and 29, 2010, and November 3, 2010. During an interview with agents on October 6, 2010, Mr. Millwood admitted to owning and operating the radio station at this location. Because Mr. Millwood operated the station consciously, 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 Mr. Millwood apparently willfully and repeatedly violated section 301 of the Act by operating radio transmission equipment without the required Commission authorization.

9. 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>12</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>13</sup> We find that Mr. Millwood's continued operation of an unlicensed radio station on several different occasions after notice 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 \$10,000 is warranted.<sup>14</sup> Applying the *Forfeiture Policy Statement*, section 1.80, and the statutory factors to the instant case, we conclude that Mr. Millwood is apparently liable for a forfeiture in the amount of \$20,000.

#### IV. ORDERING CLAUSES

10. Accordingly, **IT IS ORDERED** that, pursuant to section 503(b) of the Act, and sections 0.111, 0.311, 0.314, and 1.80 of the Rules, Recardo Millwood is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of twenty thousand dollars (\$20,000) for violations of section 301 of the Act.<sup>15</sup>

(...continued from previous page)

¶ 10 (2001) ("*Callais Cablevision, Inc.*") (proposing a forfeiture for, *inter alia*, a cable television operator's repeated signal leakage).

<sup>10</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>11</sup> 47 U.S.C. § 301.

<sup>12</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>13</sup> 47 U.S.C. § 503(b)(2)(E).

<sup>14</sup> See 47 C.F.R. § 1.80(b)(4). See also *Marckenson Bazile*, Notice of Apparent Liability for Forfeiture, 26 FCC Rcd 4928 (Enf. Bur. 2011) (upwardly adjusted by \$10,000 because violator operated an unlicensed radio station on multiple days at two different locations after notice that such action violated the rules); *Nounoune 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 after notice that such action violated the rules).

<sup>15</sup> 47 U.S.C. §§ 301, 503(b); 47 C.F.R. §§ 0.111, 0.311, 0.314, 1.80.

11. **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, Recardo Millwood **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

12. 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>16</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. Recardo Millwood shall also send electronic notification on the date said payment is made to [NER-Response@fcc.gov](mailto:NER-Response@fcc.gov).

13. 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).

14. 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>16</sup> See 47 C.F.R. § 1.1914.

15. **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 Recardo Millwood at his address of record.

FEDERAL COMMUNICATIONS COMMISSION

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