

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

In the Matter of)	File Number: EB-09-MA-0176
)	
Nounoune Lubin)	NAL/Acct. No: 201032600004
)	
North Miami, Florida)	FRN: 0020172136
)	
)	

FORFEITURE ORDER

Adopted: May 31, 2011

Released: May 31, 2011

By the Regional Director, South Central Region, Enforcement Bureau:

I. INTRODUCTION

1. In this *Forfeiture Order* (“*Order*”), we issue a monetary forfeiture in the amount of twenty thousand dollars (\$20,000) to Nounoune Lubin (“Ms. Lubin”) for willful and repeated violation of section 301 of the Communications Act of 1934, as amended (“*Act*”).¹ The noted violations involve Ms. Lubin’s operation of an unlicensed radio transmitter on the frequency 90.1 MHz in North Miami, Florida.

II. BACKGROUND

2. On September 2, 2010, the Enforcement Bureau’s Miami Office (“Miami Office”) issued a Notice of Apparent Liability for Forfeiture (“*NAL*”) to Ms. Lubin for operation of an unlicensed radio station on 90.1 MHz. As discussed in detail in the *NAL*,² agents from the Miami Office determined that Ms. Lubin, despite acknowledging receipt of two *Notices of Unlicensed Operation* (“*NOUOs*”),³ apparently continued to operate an unlicensed radio station on 90.1 MHz from her residence in North Miami, Florida. In view of the record evidence, including the fact that Ms. Lubin operated an unlicensed station after notice that such activity violated the Act and the Commission’s rules (“*Rules*”), the *NAL* proposed a forfeiture of \$20,000 against Ms. Lubin for violation of section 301 of the Act. Ms. Lubin submitted a response to the *NAL* requesting cancellation of the proposed forfeiture because she claims she did not, and has not ever, operated an unlicensed radio station.⁴

¹ 47 U.S.C. § 301.

² *Nounoune Lubin*, Notice of Apparent Liability for Forfeiture, 25 FCC Rcd 12654 (Enf. Bur. 2010).

³ The *NOUOs* warned that unlicensed operation of a radio station on 90.1 MHz violated the Act and could subject her to further enforcement action, including a substantial monetary forfeiture.

⁴ See Letter from Ovide Val, Esq., to Steven DeSena, Resident Agent, Miami Office, Enforcement Bureau (October 9, 2010) (“*NAL Response*”).

III. DISCUSSION

3. The proposed forfeiture amount in this case was assessed in accordance with section 503(b) of the Act,⁵ section 1.80 of the Rules,⁶ and the *Forfeiture Policy Statement*.⁷ In examining Ms. Lubin's response, section 503(b) of the Act requires that the Commission take into account the nature, circumstances, extent, and gravity of the violation 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.⁸ As discussed below, we have considered Ms. Lubin's response in light of these statutory factors and impose a \$20,000 forfeiture.

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.⁹ On September 9 and October 22, 2009, and on April 22 and May 12, 2010, agents from the Miami Office used direction-finding techniques and specialized radio equipment to locate the source of radio transmissions on 90.1 MHz to Ms. Lubin's residence. In the *NAL Response*, Ms. Lubin states that she "cannot prove a negative" and that she "has not, did not, and has never operated a radio station."¹⁰ Ms. Lubin provided no other information besides her assertion.

5. As discussed below, we find Ms. Lubin's assertion that she did not operate a radio station unpersuasive and thus affirm our finding in the *NAL*. The evidence before us indicates that an unlicensed radio station was operating repeatedly on 90.1 MHz from Ms. Lubin's residence. Agents observed a clearly visible coaxial cable coming in through a back window of Ms. Lubin's residence that was connected on one end to the antenna in the backyard, and on the other end to transmitting equipment apparently located in her residence. Moreover, Ms. Lubin signed for two written NOUOs notifying her that an unlicensed radio station was operating in her residence. Assuming, *arguendo*, that Ms. Lubin did not *technically* operate the radio station equipment in her residence and was originally unaware of the nature of the equipment, once she received the notices she had the opportunity to evaluate all unknown electronic equipment in her residence and ensure that operation did not continue.

6. Moreover, at a minimum, Ms. Lubin allowed the radio station equipment to remain in a residential space under her control and could have removed or unplugged the equipment at any time. For the purposes of section 301, the word "operate" has been interpreted to mean "the general conduct or management of a station as a whole as distinct from the specific technical work involved in the actual transmission of signals."¹¹ That is, the use of the word "operate" in section 301 of the Act captures not just the "actual, mechanical manipulation of radio apparatus"¹² but also operation of radio stations

⁵ 47 U.S.C. § 503(b).

⁶ 47 C.F.R. § 1.80.

⁷ *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), *recon. denied*, 15 FCC Rcd 303 (1999) ("*Forfeiture Policy Statement*").

⁸ 47 U.S.C. § 503(b)(2)(E).

⁹ 47 U.S.C. § 301.

¹⁰ *NAL Response* at 1.

¹¹ See *Campbell v. U.S.*, 167 F.2d 451, 453 (5th Cir. 1948) (comparing the use of the words "operate" and "operation" in sections 301, 307, and 318 of the Act, and concluding that the word "operate" as used in section 301 of the Act means both the technical operation of the station as well as the general conduct or management of the station).

¹² *Id.*

generally.¹³ To determine whether an individual is involved in the general conduct or management of the station, we look to, among other things, whether such individual exercises control over the station, which the Commission has defined to include “. . . any means of actual working control over the operation of the [station] in whatever manner exercised.”¹⁴ Thus, Ms. Lubin exercised control over the station which qualifies as operation under section 301 of the Act. Based on the evidence before us, we find that Ms. Lubin willfully and repeatedly violated section 301 of the Act by operating an unlicensed radio station. Accordingly, pursuant to the statutory factors above, and in conjunction with the *Forfeiture Policy Statement*, we conclude that cancellation of the forfeiture is unwarranted and impose 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, 0.204, 0.311, 0.314, and 1.80(f)(4) of the Commission’s rules, Nounoune Lubin **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of twenty thousand dollars (\$20,000) for violations of section 301 of the Act.¹⁵

8. Payment of the forfeiture shall be made in the manner provided for in section 1.80 of the Rules within 30 days of the release of this Order. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to section 504(a) of the Act.¹⁶ Payment of the forfeiture must be made by 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. Please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: ARINQUIRIES@fcc.gov with any questions regarding payment procedures. Ms. Lubin shall also send electronic notification on the date said payment is made to SCR-Response@fcc.gov.

¹³ *Id.* See 47 U.S.C § 307(c)(1).

¹⁴ *Revision of Rules and Policies for the Direct Broadcast Satellite Service*, Report and Order, 11 FCC Rcd 9712, 9747 (1995), *recon. denied*, *DIRECTV, Inc. v. FCC*, 110 F.3d 816 (D.C. Cir. 1997).

¹⁵ 47 U.S.C. §§ 301, 503(b); 47 C.F.R. §§ 0.111, 0.204, 0.311, 0.314, 1.80(f)(4).

¹⁶ 47 U.S.C. § 504(a).

9. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by First Class and Certified Mail Return Receipt Requested to Nounoune Lubin at her address of record and to her attorney, Ovide Val, at 1031 Ives Dairy Rd, Suite 228, Miami, Florida 33179.

FEDERAL COMMUNICATIONS COMMISSION

Dennis P. Carlton
Regional Director, South Central Region
Enforcement Bureau