

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

In the Matter of	)	
	)	
Michael William Downer	)	File No.: EB-FIELDSCR-12-00001027
	)	NAL/Acct. No.: 201232600012
Pompano Beach, FL	)	FRN: 0021896352
	)	

**NOTICE OF APPARENT LIABILITY FOR FORFEITURE**

Adopted: July 16, 2012

Released: July 16, 2012

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 Michael William Downer apparently willfully and repeatedly violated Section 301 of the Communications Act of 1934, as amended (Act),<sup>1</sup> by operating an unlicensed radio transmitter on the frequency 101.1 MHz in Pompano Beach, Florida. We conclude that Mr. Downer is apparently liable for a forfeiture in the amount of twenty thousand dollars (\$20,000).

**II. BACKGROUND**

2. On October 20, 2011 and February 27, 2012, 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 101.1 MHz to an FM transmitting antenna mounted on an antenna structure at a commercial property in Pompano Beach, Florida. On both dates, the agents heard the station identify itself on the air as "N-R-G." On October 20, 2011, the agents heard a live disc jockey (DJ), self-identified as DJ "Mikey Mike," mention "Mikey Mike Birthday Splash [Month Date]."<sup>2</sup> The agents determined that the signals on 101.1 MHz exceeded the limits for operation under Part 15 of the Commission's rules (Rules),<sup>3</sup> and therefore required a license. Commission records showed no authorization was issued to Mr. Downer or to anyone else for operation of an FM broadcast station at or near this address.

3. On February 27, 2012, agents from the Miami Office, accompanied by the commercial property owner, observed radio transmitting equipment, including a power amplifier connected via coaxial cable to an FM transmitting antenna that was installed in a storage room. The property owner told the agents that he rented the storage space to two men, one of whom was named "Mike" and the other "Damian." The property owner had the renters' contact phone number, which he dialed, and then handed

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<sup>1</sup> 47 U.S.C. § 301.

<sup>2</sup> Month and date redacted.

<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.

the phone to one of the agents. The agent spoke to an individual, whom the property owner identified as “Mike.” During the phone conversation, Mike asked the agent what would happen to his radio equipment. Shortly after the telephone conversation ended, the other renter, Damian Anthony Ojouku Allen,<sup>4</sup> came to the station and removed the equipment from the location.

4. Agents from the Miami Office thereafter found additional information connecting Mr. Downer to the unlicensed station on the Internet. Three associated Facebook pages, “Michael Djmikeymike Downer,”<sup>5</sup> “Mikey Mike Bday Splash,”<sup>6</sup> and “Nrg Wenzdaze,”<sup>7</sup> each displayed an advertisement with Mr. Downer’s picture<sup>8</sup> for an event called the “Mikey Mike Bday Splash,” which was being held on Mr. Downer’s date of birth.<sup>9</sup> The “Mikey Mike Bday Splash” and “Nrg Wenzdaze” webpages also referred to “nrgonlineradio.com” and “NRGONLINERADIO.COM 101.1 FM,” respectively.<sup>10</sup> The contact phone number listed on the “Mikey Mike Bday Splash” and “Nrg Wenzdaze” webpages matched a contact phone number provided by Mr. Downer and Mr. Allen on a lease agreement for a commercial suite in Lauderhill, Florida, which housed an unlicensed radio station operating on the frequency 102.1 MHz; the agents obtained a copy of the agreement during a 2010 investigation.<sup>11</sup>

### 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.<sup>12</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>13</sup> 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 Act,<sup>14</sup> and the Commission has so interpreted the term in the Section

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<sup>4</sup> The Enforcement Bureau has taken separate action against Damian Anthony Ojouku Allen. See *Damian Anthony Ojouku Allen*, File No. EB-FIELDSCR-12-00001027, Notice of Apparent Liability for Forfeiture, DA 12-1093 (Enf. Bur. July 16, 2012).

<sup>5</sup> See Facebook page, <http://www.facebook.com/people/Michael-Djmikeymike-Downer/100000739519126> (last visited June 12, 2012).

<sup>6</sup> See Facebook page, <http://www.facebook.com/events/297829443562732/> (last visited Feb. 29, 2012).

<sup>7</sup> See Facebook page, <http://www.facebook.com/nrg.wenzdaze> (last visited Feb. 29, 2012).

<sup>8</sup> Agents from the Miami Office obtained a picture of Mr. Downer from the Florida Department of Highway Safety and Motor Vehicles.

<sup>9</sup> LexisNexis Investigative Portal Homepage, <http://www.lexisnexis.com/government/solutions/investigative/> (last visited Feb. 29, 2012).

<sup>10</sup> See *supra* notes 6 and 7.

<sup>11</sup> See *Damien Allen and Michael Downer*, Hand-delivered Notice of Unlicensed Operation (Enf. Bur. July 1, 2010) (on file in EB-10-MA-0123).

<sup>12</sup> 47 U.S.C. § 503(b).

<sup>13</sup> 47 U.S.C. § 312(f)(1).

<sup>14</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 . . .”).

503(b) context.<sup>15</sup> The Commission may also assess a forfeiture for violations that are merely repeated, and not willful.<sup>16</sup> The term “repeated” means the commission or omission of such act more than once or for more than one day.<sup>17</sup>

#### A. Unlicensed Broadcast Operations

6. The evidence in this case is sufficient to establish that Mr. Downer violated Section 301 of the Act. 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>18</sup> As the record shows, on October 20, 2011 and February 27, 2012, agents from the Miami Office determined that an unlicensed radio station was operating on the frequency 101.1 MHz from a commercial building in Pompano Beach, Florida. A review of the Commission’s records revealed that no license or authorization was issued to anyone to operate a radio station on 101.1 MHz at this location. The owner of the commercial building stated that “Mike” (i.e., Michael William Downer) and another individual (i.e., Damian Anthony Ojouku Allen) rented the space housing the unlicensed radio station. During a phone conversation, “Mike” asked the agent what would happen to his radio transmitting equipment as a result of the investigation, and then apparently made arrangements with the other renter, Mr. Allen, to remove the equipment from the location.

7. In addition, the record shows that Mr. Downer was broadcasting over the unlicensed station. On October 20, 2011, agents from the Miami Office heard a live DJ identify himself on the air as DJ “Mikey Mike” and the station as “N-R-G.” An advertisement containing Mr. Downer’s picture for an event called the “Mikey Mike Bday Splash,” which was being held on Mr. Downer’s date of birth, was listed on three social networking websites associated with “NRGOnlineRadio.”<sup>19</sup> Further, the contact telephone number listed on two of the social networking websites matched a contact number for Mr. Downer that the Miami Office obtained during a previous investigation of Mr. Downer’s unlicensed operations in 2010.<sup>20</sup> The totality of the evidence convinces us that Mr. Downer was DJ “Mikey Mike,” and that he operated the unlicensed station. Because Mr. Downer consciously operated the station and did so on more than one day, the apparent violation of the Act was both willful and repeated. We therefore conclude, based on the evidence before us, that Mr. Downer apparently willfully and repeatedly violated Section 301 of the Act by operating radio transmission equipment without the required Commission authorization.<sup>21</sup>

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<sup>15</sup> See, e.g., *Application for Review of Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991), *recons. denied*, 7 FCC Rcd 3454 (1992).

<sup>16</sup> See, e.g., *Callais Cablevision, Inc.*, Notice of Apparent Liability for Monetary Forfeiture, 16 FCC Rcd 1359, 1362, para. 10 (2001) (*Callais Cablevision, Inc.*) (proposing a forfeiture for, *inter alia*, a cable television operator’s repeated signal leakage).

<sup>17</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.” See *Callais Cablevision, Inc.*, 16 FCC Rcd at 1362.

<sup>18</sup> 47 U.S.C. § 301.

<sup>19</sup> See *supra* notes 5-7.

<sup>20</sup> See *supra* note 11.

<sup>21</sup> The fact that someone else in addition to Mr. Downer may have been involved in the station’s operations does not make Mr. Downer any less of a participant in the station’s unlicensed operations. We have previously held that, because Section 301 of the Act provides that “no person shall use or operate” radio transmission equipment, the liability for unlicensed operation may be assigned to any individual taking part in the operation of the unlicensed station, regardless of who else may be responsible for the operation. 47 U.S.C. § 301 (emphasis added); see, e.g., *Jean L. Senatus*, Forfeiture Order, 20 FCC Rcd 14418, at para. 11 (Enf. Bur. 2005); *Robert Brown*, EB-10-BS-0050, Memorandum Opinion and Order, DA 12-929, 2012 WL 2391969 (Enf. Bur. June 22, 2012), *aff’g*, Forfeiture Order, (continued....)

## B. Proposed Forfeiture Amount

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.<sup>22</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>23</sup> In doing so, we find that the violations here warrant a proposed forfeiture above the base amount. Commission records show that the Miami Office previously issued several *Notices of Unlicensed Operation* to Mr. Downer for operation of unlicensed stations on 102.1 MHz at other locations in Florida.<sup>24</sup> The fact that Mr. Downer continued to operate an unlicensed station after being put on notice several times that his unlicensed operation or a radio station contravened the Act, the Commission's rules, and related Commission orders demonstrate a deliberate disregard for the Commission's requirements. Thus, we find that an additional upward adjustment of \$10,000 in the forfeiture amount is warranted.<sup>25</sup> Applying the *Forfeiture Policy Statement*, Section 1.80 of the Rules, and the statutory factors to the instant case, we conclude that Mr. Downer is apparently liable for a forfeiture in the amount of \$20,000. We further caution Mr. Downer that future violations may subject him to more severe enforcement action, including but not limited to larger monetary forfeitures, criminal prosecution, and the *in rem* seizure of his equipment.<sup>26</sup>

## 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, 0.311, 0.314, and 1.80 of the Commission's rules, Michael William Downer 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>27</sup>

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26 FCC Rcd 6854 (Enf. Bur. 2011), *aff'g*, Notice of Apparent Liability for Forfeiture, 25 FCC Rcd 13740 (Enf. Bur. 2010); *Lloyd Morris*, EB-09-BS-0046, Memorandum Opinion and Order, DA 12-930, 2012 WL 2391973 (Enf. Bur. June 22, 2012), *aff'g*, Forfeiture Order, 26 FCC Rcd 6856 (Enf. Bur. 2011), *aff'g*, Notice of Apparent Liability for Forfeiture, 25 FCC Rcd 13736 (Enf. Bur. 2010).

<sup>22</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*), *recons. denied*, 15 FCC Rcd 303 (1999); 47 C.F.R. § 1.80.

<sup>23</sup> 47 U.S.C. § 503(b)(2)(E).

<sup>24</sup> See *Michael Downer*, Notice of Unlicensed Operation (Enf. Bur., Dec. 3, 2009) (on file in EB 09-MA-0174); *Michael Downer*, Hand-delivered Notice of Unlicensed Operation (Enf. Bur. Mar. 26, 2010) (on file in EB-09-MA-0174); *Damian Anthony Ojouku Allen and Michael Downer*, Hand-delivered Notice of Unlicensed Operation (Enf. Bur. May 21, 2010) (on file in EB-10-MA-0088); *Damian Allen and Michael Downer*, Hand-delivered Notice of Unlicensed Operation (Enf. Bur. July 1, 2010) (on file in EB-10-MA-0123).

<sup>25</sup> See, e.g., *Whisler Fleurinor*, Notice of Apparent Liability for Forfeiture, 26 FCC Rcd 2478 (Enf. Bur. 2011) (imposing a \$20,000 forfeiture for violations of Section 301); *Nounone Lubin*, Notice of Apparent Liability for Forfeiture, 25 FCC Rcd 12654 (Enf. Bur. 2010) (imposing a \$20,000 forfeiture for violations of Section 301).

<sup>26</sup> See 47 U.S.C. §§ 401, 501, 503, 510.

<sup>27</sup> 47 U.S.C. §§ 301, 503(b); 47 C.F.R. §§ 0.111, 0.204, 0.311, 0.314, 1.80.

10. **IT IS FURTHER ORDERED** that, pursuant to Section 1.80 of the Commission's rules, within thirty (30) calendar days of the release date of this Notice of Apparent Liability for Forfeiture, Michael William Downer **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 check or similar instrument, wire transfer, or credit card, and must include the NAL/Account number and FRN referenced above. Michael William Downer shall also send electronic notification on the date said payment is made to [SCR-Response@fcc.gov](mailto:SCR-Response@fcc.gov). Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted.<sup>28</sup> When completing the FCC Form 159, enter the Account Number in block number 23A (call sign/other ID) and enter the letters "FORF" in block number 24A (payment type code). Below are additional instructions you should follow based on the form of payment you select:

- Payment by check or money order must be made payable to the order of the Federal Communications Commission. Such payments (along with the completed Form 159) must be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.
- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. To complete the wire transfer and ensure appropriate crediting of the wired funds, a completed Form 159 must be faxed to U.S. Bank at (314) 418-4232 on the same business day the wire transfer is initiated.
- Payment by credit card must be made by providing the required credit card information on FCC Form 159 and signing and dating the Form 159 to authorize the credit card payment. The completed Form 159 must then be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.

12. Any request for full payment under an installment plan should be sent to: Chief Financial Officer—Financial Operations, Federal Communications Commission, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554.<sup>29</sup> If you have questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone, 1-877-480-3201, or by e-mail, [ARINQUIRIES@fcc.gov](mailto:ARINQUIRIES@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 1.16 and 1.80(f)(3) of the Rules.<sup>30</sup> Mail the written statement to Federal Communications Commission, Enforcement Bureau, South Central Region, Miami Office, P.O. Box 520617, Miami, FL 33152-0617, and include the NAL/Acct. No. referenced in the caption. Michael William Downer also shall e-mail the written response to [SCR-Response@fcc.gov](mailto:SCR-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

<sup>28</sup> An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

<sup>29</sup> See 47 C.F.R. § 1.1914.

<sup>30</sup> 47 C.F.R. §§ 1.16, 1.80(f)(3).

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.

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 First Class Mail to Michael William Downer at his address of record.

FEDERAL COMMUNICATIONS COMMISSION

Steven DeSena  
Resident Agent  
Miami Office  
South Central Region  
Enforcement Bureau