

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

|                          |   |                            |
|--------------------------|---|----------------------------|
| In the Matter of         | ) |                            |
|                          | ) |                            |
| Robens Cheriza           | ) | File No: EB-11-MA-0044     |
|                          | ) | NAL/Acct. No: 201232600007 |
| West Palm Beach, Florida | ) | FRN: 0021457213            |
|                          | ) |                            |

**NOTICE OF APPARENT LIABILITY FOR FORFEITURE**

**Adopted:** February 1, 2012

**Released:** February 1, 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 Robens Cheriza 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 107.3 MHz from his residence in West Palm Beach, Florida. We conclude that Mr. Cheriza is apparently liable for a forfeiture in the amount of twenty thousand dollars (\$20,000).

**II. BACKGROUND**

2. On April 2, 2011, based on a complaint by the Federal Aviation Administration (FAA) of interference to Palm Beach International Airport's control tower frequency 119.1 MHz<sup>2</sup> from an unlicensed station on 107.3 MHz, agents from the Enforcement Bureau's Miami Office (Miami Office) used direction-finding techniques to locate the source of radio frequency transmissions on the frequencies 107.3 MHz and 119.1 MHz to an antenna mounted at a residence in West Palm Beach, Florida. The agents determined that the signal on 107.3 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 issued to Mr. Cheriza or to anyone else for operation of an FM broadcast station at or near this address on either of these frequencies.

3. On the date of the investigation—just moments before entering Mr. Cheriza's residence—agents observed that the station on 107.3 MHz all of a sudden went off the air. In response to a request to inspect his transmitting equipment, Mr. Cheriza escorted agents to the enclosed patio, where agents observed an FM broadcast transmitter connected by coaxial cable to the transmitting antenna. The agents

<sup>1</sup> 47 U.S.C. § 301.

<sup>2</sup> The frequency 119.1 MHz lies within the 108-121.94 MHz band and is listed as a restricted band in Section 15.205(a) of the Commission's rules. 47 C.F.R. § 15.205(a).

<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.

also observed that the transmitter was connected by audio cables to an operational broadcast studio, consisting of a PC computer, laptop, microphone, and audio mixer, in Mr. Cheriza's residence. Mr. Cheriza stated that he was the owner of the studio and transmitting equipment and had operated the station on 107.3 MHz from his residence for about a month. Mr. Cheriza also stated that he was aware that operating an unlicensed station was illegal. During the inspection, the agents confirmed that the station they had monitored on 107.3 MHz came back on the air when Mr. Cheriza turned the transmitter on momentarily. In addition, Mr. Cheriza confirmed that he broadcast a party live from his residence on the evening of April 1, 2011, which is consistent with the FAA's complaint about hearing audio of a party on 107.3 MHz and 119.1 MHz on the evening of April 1, 2011; and it was the latter transmission that interfered with the FAA's control tower frequency.

### III. DISCUSSION

4. Section 503(b) of the Act<sup>4</sup> 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. 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>5</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>6</sup> and the Commission has so interpreted the term in the Section 503(b) context.<sup>7</sup> The Commission may also assess a forfeiture for violations that are merely repeated, and not willful.<sup>8</sup> The term "repeated" means the commission or omission of such act more than once or for more than one day.<sup>9</sup>

#### A. Unlicensed Operations

5. 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>10</sup> On April 2, 2011, Mr.

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<sup>4</sup> 47 U.S.C. § 503(b).

<sup>5</sup> 47 U.S.C. § 312(f)(1).

<sup>6</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>7</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) (*Southern California Broadcasting Co.*).

<sup>8</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>9</sup> *Southern California Broadcasting Co.*, 6 FCC Rcd at 4388, para. 5; *Callais Cablevision, Inc.*, 16 FCC Rcd at 1362, para. 9. 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>10</sup> 47 U.S.C. § 301.

Cheriza operated an unlicensed radio station on the frequency 107.3 MHz from his residence in West Palm Beach, Florida. Mr. Cheriza admitted to operating the unlicensed station from his residence for about a month. A review of the Commission's records revealed that Mr. Cheriza did not have a license to operate a radio station at this location. Because Mr. Cheriza consciously operated the station and on more than one day, the apparent violation was both willful and repeated. Therefore, based on the evidence before us, we find that Mr. Cheriza apparently willfully and repeatedly violated Section 301 of the Act by operating radio transmission equipment without the required Commission authorization.

#### B. Proposed Forfeiture Amount

6. 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>11</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>12</sup> In doing so, we find that the violations here warrant a proposed forfeiture above the base amount. As the record reflects, Mr. Cheriza's unlicensed operations on 107.3 MHz produced a spurious signal on the frequency 119.1 MHz, which caused harmful interference to Palm Beach International Airport's control tower communications, thereby creating a safety hazard to the operation of aircraft. Moreover, the fact that Mr. Cheriza operated an unlicensed station after admitting to knowing that such action contravened the Act and the Commission's rules demonstrate a deliberate disregard for the Act and the Commission's requirements. Thus, we find that an additional upward adjustment of \$10,000 in the forfeiture amount is warranted.<sup>13</sup> Applying the *Forfeiture Policy Statement*, Section 1.80 of the Rules, and the statutory factors to the instant case, we conclude that Mr. Cheriza 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, 0.204, 0.311, 0.314, and 1.80 of the Commission's rules, Robens Cheriza 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.<sup>14</sup>

8. **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, Robens Cheriza **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

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<sup>11</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>12</sup> 47 U.S.C. § 503(b)(2)(E).

<sup>13</sup> *See, e.g., Gabriel A. Garcia*, Notice of Apparent Liability for Forfeiture, 26 FCC Rcd 3750 (Enf. Bur., San Francisco Office 2011) (imposing a \$25,000 forfeiture for repeated and willful violations of Section 301; the forfeiture amount included a \$15,000 upward adjustment because of the deliberate nature of the violations and the interference caused to FAA operations).

<sup>14</sup> 47 U.S.C. §§ 301, 503(b); 47 C.F.R. §§ 0.111, 0.204, 0.311, 0.314, 1.80.

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.<sup>15</sup> For questions about payment procedures, contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: [ARINQUIRIES@fcc.gov](mailto:ARINQUIRIES@fcc.gov). Robens Cheriza shall send electronic notification on the date said payment is made to [SCR-Response@fcc.gov](mailto: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.<sup>16</sup> The written statement must be mailed to Federal Communications Commission, Enforcement Bureau, South Central Region, Miami Office, P.O. Box 520617, Miami, FL 33152-0617, and must include the NAL/Acct. No. referenced in the caption. The written statement shall also be emailed to [SCR-Response@fcc.gov](mailto: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-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 Robens Cheriza at his address of record.

FEDERAL COMMUNICATIONS COMMISSION

Steven DeSena  
Resident Agent  
Miami Office  
South Central Region  
Enforcement Bureau

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<sup>15</sup> See 47 C.F.R. § 1.1914.

<sup>16</sup> 47 C.F.R. §§ 1.16, 1.80(f)(3).