

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

In the Matter of
AERCO Broadcasting Corporation
Licensee of Station WSJU-TV
San Juan, PR 00927
File No.: EB-FIELDSCR-12-00000602
NAL/Acct. No.: 201232680005
FRN No.: 0003732435
Facility ID No.: 4077

NOTICE OF APPARENT LIABILITY FOR FOFEITURE AND ORDER

Adopted: July 30, 2012

Released: July 30, 2012

By the Resident Agent, San Juan Office, South Central Region, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture and Order (NAL), we find that AERCO Broadcasting Corporation (AERCO), licensee of Station WSJU-TV in San Juan, Puerto Rico, apparently willfully and repeatedly violated Section 301 of the Communications Act of 1934, as amended (Act), by operating a studio-to-transmitter link (STL) without FCC authorization. We conclude that AERCO is apparently liable for a forfeiture in the amount of ten thousand dollars (\$10,000). In addition, we direct AERCO to submit no later than thirty (30) calendar days from the date of this NAL a statement, signed under penalty of perjury, describing the steps it has taken to bring its unlicensed STL into compliance.

II. BACKGROUND

2. On February 29, and May 16 and 17, 2012, in response to a complaint of interference, agents from the Enforcement Bureau's San Juan Office (San Juan Office) used direction-finding techniques to locate the source of radio frequency transmissions on the frequency 2067.5 MHz. On each inspection date, the agents determined that the source of the transmission on 2067.5 MHz was Station WSJU-TV's main studio located at 1508 Bori Street, Urb. Antonsanti, San Juan.

3. During the inspection of Station WSJU-TV on May 17, 2012, an agent from the San Juan Office observed that the Station was operating an aural broadcast STL on the frequency 2067.5 MHz. In response to the agent's request to see the license for the STL link, the Station employee on duty admitted that the Station did not have an authorization or license for the STL link. Later that same day, the agent spoke to the Station's engineer via telephone, and the Station's engineer also admitted that the Station was using 2067.5 MHz to transmit programming from the main studio to the transmitter site and that the Station had no license for the STL. The agent consulted the Commission's databases and confirmed that, indeed, AERCO does not hold a license to operate a STL on 2067.5 MHz from that or any other location.

III. DISCUSSION

4. 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

1 47 U.S.C. § 301.

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.² 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.³ 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,⁴ and the Commission has so interpreted the term in the Section 503(b) context.⁵ The Commission may also assess a forfeiture for violations that are merely repeated, and not willful.⁶ The term “repeated” means the commission or omission of such act more than once or for more than one day.⁷

A. Operation of an Unlicensed Studio-to-Transmitter Link

5. The evidence in this case establishes that AERCO violated Section 301 of the Act. Section 301 of the Act requires 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.⁸ On February 29, and May 16 and 17, 2012, agents from the San Juan Office determined that transmissions on the frequency 2067.5 MHz were emanating from Station WSJU-TV’s main studio in San Juan. On May 17, 2012, an agent observed that Station WSJU-TV was operating an STL on 2067.5 MHz; and, in response to the agent’s questions, AERCO staff admitted that the Station was operating an STL on 2067.5 MHz and that it did not have a license for the STL. An agent from the San Juan Office also confirmed after checking the Commission’s databases that AERCO does not hold a license to operate on 2067.5 MHz from that or any other location. Thus, based on the evidence before us, we find that AERCO apparently willfully and repeatedly violated Section 301 of the Act by operating an unlicensed STL link on the frequency 2067.5 MHz.

² 47 U.S.C. § 503(b).

³ 47 U.S.C. § 312(f)(1).

⁴ 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 . . .”).

⁵ 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).

⁶ 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).

⁷ 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.

⁸ 47 U.S.C. § 301.

B. Proposed Forfeiture Amount and Reporting Requirement

6. Pursuant to the Commission's *Forfeiture Policy Statement* and Section 1.80 of the Rules,⁹ the base forfeiture amount for operation without an instrument of authorization is \$10,000.¹⁰ 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.¹¹ Applying the *Forfeiture Policy Statement*, Section 1.80 of the Rules, and the statutory factors to the instant case, we find no downward adjustments are warranted and conclude that AERCO is apparently liable for a forfeiture of \$10,000 for operation of an unlicensed STL.

7. We also direct AERCO to submit a written statement, pursuant to Section 1.16 of the Rules,¹² signed under penalty of perjury by an officer or director of AERCO, stating that it is operating Station WSJU-TV and its associated STL in compliance with Section 301 of the Act,¹³ and detailing the specific actions taken by AERCO to come into compliance. This statement must be provided to the San Juan Office at the address listed in paragraph 13, below, within thirty (30) calendar days of the release date of this NAL.

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 Commission's rules, AERCO Broadcasting Corporation is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of ten thousand dollars (\$10,000) for violations of Section 301 of the Act.¹⁴

9. **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 and Order, AERCO Broadcasting Corporation **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

10. **IT IS FURTHER ORDERED** that AERCO Broadcasting Corporation **SHALL SUBMIT** a statement as described in paragraph 7, above, to the San Juan Office within thirty (30) calendar days of the release date of this Notice of Apparent Liability for Forfeiture and Order. The statement must be mailed to Federal Communications Commission, Enforcement Bureau, South Central Region, San Juan Office, U.S.

⁹ *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.

¹⁰ The Enforcement Bureau has determined that unauthorized operation in any of the licensed services is a serious violation and will merit the base forfeiture of \$10,000 prior to the application of the adjustment criteria listed in Section 503(b)(2)(E) of the Act. *See BASF Corporation*, Notice of Apparent Liability for Forfeiture, 25 FCC Rcd 17300, 17302-03, paras. 9-11 (Enf. Bur. 2010) (applying the \$10,000 base forfeiture for unauthorized operation of a station in the Private Land Mobile Radio Service, then upwardly adjusting the total forfeiture to \$25,000 for that violation and for failure to file a timely renewal application for the station).

¹¹ 47 U.S.C. § 503(b)(2)(E).

¹² 47 C.F.R. § 1.16.

¹³ 47 U.S.C. § 301.

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

Federal Building, Room 762, Hato Rey, PR 00918-1731. AERCO Broadcasting Corporation shall also e-mail the written statement to SCR-Response@fcc.gov.

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. AERCO Broadcasting Corporation shall send electronic notification of payment to SCR-Response@fcc.gov on the date said payment is made. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted.¹⁵ 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. 20554.¹⁶ 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.

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.¹⁷ Mail the written statement to Federal Communications Commission, Enforcement Bureau, South Central Region, San Juan Office, U.S. Federal Building, Room 762, Hato Rey, PR 00918-1731, and include the NAL/Acct. No. referenced in the caption. AERCO Broadcasting Corporation also shall e-mail the written response to 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 other reliable and objective documentation that accurately reflects the petitioner’s current financial status.

¹⁵ An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

¹⁶ See 47 C.F.R. § 1.1914.

¹⁷ 47 C.F.R. §§ 1.16, 1.80(f)(3).

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 and Order shall be sent by both Certified Mail, Return Receipt Requested, and First Class Mail to AERCO Broadcasting Corporation at 1508 Calle Bori, Urb. Antonsanti, San Juan, PR 00927.

FEDERAL COMMUNICATIONS COMMISSION

William Berry
Resident Agent
San Juan Office
South Central Region
Enforcement Bureau