

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

In the Matter of
Burt Byng
Miami, Florida
File No.: EB-FIELDSCR-12-00000831
NAL/Acct. No.: 201232600016
FRN: 0021991153

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: August 21, 2012

Released: August 22, 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 Burt Byng apparently willfully violated Section 301 of the Communications Act of 1934, as amended (Act), by operating an unlicensed radio transmitter on the frequency 107.1 MHz in Miami, Florida. We conclude that Mr. Byng is apparently liable for a forfeiture in the amount of ten thousand dollars (\$10,000).

II. BACKGROUND

2. On February 9, 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 107.1 MHz to an FM transmitting antenna mounted on the roof of a commercial property in Miami, Florida. The agents determined that the signals on 107.1 MHz exceeded the limits for operation under Part 15 of the Commission’s rules (Rules), and therefore required a license. While monitoring the station, the agents also heard the station identify itself on the air as “WEROC Radio.” Commission records showed that no authorization was issued to Mr. Byng or to anyone else for operation of an FM broadcast station at or near this address.

3. On the same date, agents from the Miami Office, accompanied by the property owner, inspected the unlicensed station’s antenna and transmitter located on the rooftop of the commercial building. According to the “Move In Sheet” provided by the property owner, a company called J & B Enterprise US, Inc. was the tenant of the particular area on the rooftop where the transmitting equipment was located. The property owner also provided a copy of Mr. Byng’s driver’s license and identified Mr. Byng as the individual who rented the rooftop space. According to Florida records, Mr. Byng is the President of an inactive business named “J & B Enterprises US, Inc.” The agents also discovered that Mr. Byng registered

1 47 U.S.C. § 301.

2 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.

3 Florida Department of State, Division of Corporations, www.sunbiz.org (last visited Feb. 22, 2012).

the domain name, www.werocradio.com, a webpage for “W-E-R-O-C Radio.”<sup>4</sup> The agents also noticed that the phone number listed in the www.werocradio.com domain registration was the same phone number listed on the aforementioned “Move In Sheet” provided by the property owner.

### 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 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 Sections 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>

#### A. Unlicensed Broadcast Operation

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>11</sup> For the purposes of Section 301, the word “operate” has been interpreted to mean both the technical operation of the station, as well as “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.”<sup>12</sup> In other words, the use of the word

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<sup>4</sup> See [www.networksolutions.com/whois-search/werocradio.com](http://www.networksolutions.com/whois-search/werocradio.com) (last visited Feb. 28, 2012).

<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, 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 . . . .”).

<sup>8</sup> See, e.g., *Application for Review of Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388, para. 5 (1991), *recons. 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, para. 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.” See *Callais Cablevision, Inc.*, 16 FCC Rcd at 1362, para. 9.

<sup>11</sup> 47 U.S.C. § 301.

<sup>12</sup> See *Campbell v. United States*, 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

“operate” in Section 301 captures not just the “actual, mechanical manipulation of radio apparatus,”<sup>13</sup> but also operation of a radio station generally.<sup>14</sup> To determine whether an individual is involved in the general conduct or management of the station, we can consider 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.”<sup>15</sup>

6. We find that the record evidence in this case is sufficient to establish that Mr. Byng violated Section 301 of the Act. On February 9, 2012, agents from the Miami Office determined that an unlicensed radio station on the frequency 107.1 MHz operated from the rooftop of a commercial building in Miami, Florida. On this day, the agents heard the station engaged in live broadcasts and identify itself as “WERO Radio.” A review of the Commission’s records revealed that no license or authorization was issued to anyone to operate a radio station on 107.1 MHz at this location. Under Section 301, Mr. Byng can be said to have “operated” the unlicensed radio station on 107.1 MHz because the evidence shows that Mr. Byng exercised control over the general conduct or management of the station. According to the commercial building owner, Mr. Byng, on behalf of an entity for which he served as President, leased the space on the rooftop that housed the station, and the rented space appeared to the agents to be used primarily for the purpose of operating the unlicensed station. In addition, Mr. Byng registered the domain name for the www.werocradio.com website. The foregoing facts indicate that Mr. Byng consciously operated and/or otherwise was involved in the general conduct or management of the unauthorized station. We therefore conclude, based on the evidence before us, that Mr. Byng apparently willfully violated Section 301 of the Act by operating radio transmission equipment without the required Commission authorization.

#### **B. Proposed Forfeiture Amount**

7. 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>16</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>17</sup> Applying the *Forfeiture Policy Statement*, Section 1.80 of the Rules, and the statutory factors to the instant case, we conclude that Mr. Byng is apparently liable for a forfeiture in the amount of \$10,000.

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of the Act means both the technical operation of the station as well as the general conduct or management of the station).

<sup>13</sup> *Id.*

<sup>14</sup> *Id.* See also 47 U.S.C § 307(c)(1).

<sup>15</sup> See *Revision of Rules and Policies for the Direct Broadcast Satellite Service*, 11 FCC Rcd 9712, 9747 (1995), *recons. denied*, *DIRECTV, Inc. v. FCC*, 110 F.3d 816 (D.C. Cir. 1997).

<sup>16</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>17</sup> 47 U.S.C. § 503(b)(2)(E).

#### 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, Burt Byng is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of ten thousand dollars (\$10,000) for violation of Section 301 of the Act.<sup>18</sup>

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, Burt Byng **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

10. 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. Burt Byng will 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>19</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.

11. 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>20</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).

12. 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

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<sup>18</sup> 47 U.S.C. §§ 301, 503(b); 47 C.F.R. §§ 0.111, 0.204, 0.311, 0.314, 1.80.

<sup>19</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>20</sup> See 47 C.F.R. § 1.1914.

to Sections 1.16 and 1.80(f)(3) of the Rules.<sup>21</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. Burt Byng also shall e-mail the written response to SCR-Response@fcc.gov.

13. 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.

14. **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 Burt Byng at his address of record.

FEDERAL COMMUNICATIONS COMMISSION

Stephanie Dabkowski  
Resident Agent  
Miami Office  
South Central Region  
Enforcement Bureau

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<sup>21</sup> 47 C.F.R. §§ 1.16, 1.80(f)(3).