

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

In the Matter of)	
)	
Glen Rubash)	File Number: EB-FIELDSCR-12-00004676
)	NAL/Acct. No.: 201332560002
Licensee of Amateur Radio Station KC0GPV)	FRN: 0002373934
Manhattan, Kansas)	
)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: December 5, 2012

Released: December 5, 2012

By the District Director, Kansas City Office, South Central Region, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture (NAL), we find that Glen Rubash, licensee of Amateur Radio Station KC0GPV in Manhattan, Kansas, apparently willfully and repeatedly violated Section 301 of the Communications Act of 1934, as amended (Act),¹ by operating an unlicensed radio transmitter on the frequency 88.3 MHz in Manhattan, Kansas. We conclude that Mr. Rubash is apparently liable for a forfeiture in the amount of ten thousand dollars (\$10,000).

II. BACKGROUND

2. On September 26, 2012, in response to a complaint, agents from the Enforcement Bureau's Kansas City Office (Kansas City Office) used direction-finding techniques to locate the source of radio frequency transmissions on the frequency 88.3 MHz to an FM transmitting antenna mounted on a pole next to a residence in Manhattan, Kansas. The agents determined that the signals on 88.3 MHz exceeded the limits for operation under Part 15 of the Commission's rules (Rules),² and therefore required a license. The Commission's records showed that no authorization was issued to Mr. Rubash or to anyone else for operation of an FM broadcast station at or near this address.

3. On September 27, 2012, agents from the Kansas City Office again used direction-finding techniques to confirm if the station was still operating on 88.3 MHz from the same location, and found that it was. The agents, accompanied by the property owner, inspected the unlicensed station's antenna and transmitter located in a locked detached garage. The property owner stated that he allowed Mr. Rubash to use the garage to operate the radio station and that he thought the operation was legal because Mr. Rubash told him that he was a licensed radio operator. Later that same day, Mr. Rubash spoke to an agent from the Kansas City Office via telephone and confirmed that he was an extra class amateur licensee (assigned call sign KC0GPV). Mr. Rubash also admitted that he purchased the radio transmitter and that the station had been on the air for two months. Mr. Rubash added that he would not voluntarily relinquish the transmitter if asked to do so.

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.

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.³ 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.⁴ 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,⁵ and the Commission has so interpreted the term in the Section 503(b) context.⁶ The Commission may also assess a forfeiture for violations that are merely repeated, and not willful.⁷ The term “repeated” means the commission or omission of such act more than once or for more than one day.⁸

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.⁹ 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.”¹⁰ In other words, the use of the word “operate” in Section 301 captures not just the “actual, mechanical manipulation of radio apparatus,”¹¹ but also operation of a radio station generally.¹² To determine whether an individual is involved in the general conduct or management of the station, we can consider whether such individual exercises control

³ 47 U.S.C. § 503(b).

⁴ 47 U.S.C. § 312(f)(1).

⁵ 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”).

⁶ 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).

⁷ 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).

⁸ 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.

⁹ 47 U.S.C. § 301.

¹⁰ 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 of the Act means both the technical operation of the station as well as the general conduct or management of the station).

¹¹ *Id.*

¹² *Id.* See also 47 U.S.C. § 307(c)(1).

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.”¹³

6. We find that the record evidence in this case is sufficient to establish that Mr. Rubash violated Section 301 of the Act. On September 26 and 27, 2012, agents from the Kansas City Office determined that an unlicensed station on the frequency 88.3 MHz operated from a detached garage in Manhattan, Kansas. A review of the Commission’s records revealed that no license or authorization was issued to anyone to operate a radio station on 88.3 MHz at this location. Under Section 301, Mr. Rubash can be said to have “operated” the unlicensed radio station on 88.3 MHz because the evidence shows that Mr. Rubash exercised control over the general conduct or management of the station. In this regard, Mr. Rubash secured space to a residential garage specifically to house and operate the unlicensed radio station; acknowledged owning the station’s radio transmitting equipment; and demonstrated control over it by stating that he would refuse to surrender the equipment to the agents from the Kansas City Office if required to do so. In addition, the property owner confirmed that he specifically permitted Mr. Rubash to use the garage to operate the radio station, which he presumed was lawful, given that Mr. Rubash had told him that he was a licensed radio operator. Furthermore, because Mr. Rubash is a licensed extra class amateur operator, he presumably was aware (or should have been aware) that operation of the radio transmitter required a license. The foregoing facts indicate that Mr. Rubash consciously operated and/or otherwise was involved in the general conduct or management of the unauthorized station.¹⁴ We therefore conclude, based on the evidence before us, that Mr. Rubash apparently willfully and repeatedly 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 \$10,000.¹⁵ 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.¹⁶ Applying the *Forfeiture Policy Statement*, Section 1.80 of the Rules, and the statutory factors to the instant case, we conclude that Mr. Rubash is apparently liable for a forfeiture in the amount of \$10,000.¹⁷

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, 0.311, 0.314, and 1.80 of the Commission’s rules, Glen Rubash 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.¹⁸

¹³ 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).

¹⁴ See *Damian Anthony Ojouku Allen*, Notice of Apparent Liability for Forfeiture, 27 FCC Rcd 7956 (Enf. Bur. 2012) (person renting space and owning and removing transmitting equipment found to be operator).

¹⁵ *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.

¹⁶ 47 U.S.C. § 503(b)(2)(E).

¹⁷ See *Brian R. Ragan*, Notice of Apparent Liability for Forfeiture and Order, 27 FCC Rcd 7331 (Enf. Bur. 2012) (imposing \$10,000 forfeiture to amateur licensee for operating an unlicensed broadcast radio station).

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

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, Glen Rubash **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. Glen Rubash will also send electronic notification on the date said payment is made to SCR-Response@fcc.gov. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted.¹⁹ 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. 20554.²⁰ 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.

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 to Sections 1.16 and 1.80(f)(3) of the Rules.²¹ Mail the written statement to Federal Communications Commission, Enforcement Bureau, South Central Region, Kansas City Office, 520 N.E. Colbern Rd., 2nd Floor, Lees Summit, Missouri 64086-4711, and include the NAL/Acct. No. referenced in the caption. Glen Rubash 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

¹⁹ An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

²⁰ See 47 C.F.R. § 1.1914.

²¹ 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.

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 Glen Rubash at his address of record.

FEDERAL COMMUNICATIONS COMMISSION

Ronald D. Ramage
District Director
Kansas City Office
South Central Region
Enforcement Bureau