

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

In the Matter of)
Fabrice Polynice) File No.: EB-FIELDSCR-12-00004798
North Miami, Florida) NAL/Acct. No.: 201332600001
) FRN: 0022240279
)

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: December 5, 2012 Released: December 5, 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 Fabrice Polynice apparently willfully and repeatedly violated Section 301 of the Communications Act of 1934, as amended (Act),¹ by operating unlicensed radio transmitters on the frequency 90.1 MHz in North Miami, Florida. We conclude that Mr. Polynice is apparently liable for a forfeiture in the amount of twenty five thousand dollars (\$25,000).

II. BACKGROUND

2. While conducting routine monitoring of the airwaves, agents from the Enforcement Bureau’s Miami Office (Miami Office) determined that an unlicensed radio station was operating on the frequency 90.1 MHz from multiple locations, presumably to evade detection. On six different days during March to July 2012, agents from the Miami Office used direction-finding techniques to locate the source of radio frequency transmissions on the frequency 90.1 MHz and traced it to three separate locations in North Miami.² The agents made signal strength measurements at each of the three locations, and determined that the signals on 90.1 MHz exceeded the limits for operation under Part 15 of the Commission’s rules (Rules),³ and therefore required a license. The Commission’s records showed that no

¹ 47 C.F.R. § 301

² The three locations, the specific dates that the unlicensed radio stations were being investigated, and the resulting actions were as follows—

Location “A” on NE 131st Street, North Miami: March 14, 2012 (signal strength measurements taken); May 9, 2012; June 13, 2012; July 3, 2012 (signal strength measurements taken); and July 5, 2012 (agents observed the transmitting equipment during an inspection, but the station was not on the air; transmitting equipment seized by federal marshals);

Location “B” on NW 2nd Avenue, North Miami: May 9, 2012 (signal strength measurements taken); and July 12, 2012 (signal strength measurements taken);

Location “C” on NE 136th Street, North Miami: July 5, 2012 (signal strength measurements taken); and July 9, 2012 (agents observed the transmitting equipment during the inspection, but the station was not on the air).

³ 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

(continued...)

authorization was issued to Mr. Polynice or to anyone else for operation of an FM broadcast station at or near any of the three locations. The unlicensed station continued to operate at one of the locations even after federal marshals seized the radio transmitting equipment located at another location.⁴

3. The agents from the Miami Office knew the three locations were broadcasting the same station because they heard common elements at all three locations. The agents heard the station identify or refer to itself as “Touche Douce” at the first two locations. The agents heard a disc jockey (DJ) identify himself live on the air as DJ “Paz” and announce Mr. Polynice’s phone number of record⁵ as the station’s phone number at the first location. The agents again heard the station announce Mr. Polynice’s phone number on the air and an upcoming event featuring DJ “Paz” from the third location. The agents also observed, in two of the station locations, computers with open audio playlists called “radiotouchedouce,” as well as media documents and folders reflecting the name “Paz.”⁶

4. The agents determined that Mr. Polynice is DJ “Paz.” The agents found information on the Internet identifying Mr. Polynice as DJ “Paz” and connecting him to “Touche Douce.” Florida Department of State Division of Corporations records also list Mr. Polynice as the registered agent for a business called “Touche Douce Ent Inc.”⁷ Webpages for Radio Touche Douce clearly state that the station operates on 90.1 MHz from Mr. Polynice’s address of record and list Mr. Polynice’s phone number of record.⁸ Mr. Polynice’s photograph is also posted on several webpages with captions identifying him as DJ “Paz.”⁹ Finally, the agents confirmed that Mr. Polynice has a history of operating unlicensed radio stations in the

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broadcasting in the 88-108 MHz band is permitted only if the field strength of the transmission does not exceed 250 $\mu\text{V}/\text{m}$ at three meters. 47 C.F.R. § 15.239.

⁴ See *United States v. Any and All Radio Station Equip.*, No. 12-22249 (S.D. Fla. July 10, 2012) (executed warrant). See also 47 U.S.C. § 510.

⁵ See Lexis Nexis Investigative Portal Homepage, <http://www.lexisnexis.com/government/solutions/investigative/>, Person Report (last visited Oct. 12, 2012).

⁶ The agents inspected two of the station locations when Mr. Polynice was not present. One inspection was conducted following seizure of the transmitting equipment by federal marshals. The other was conducted with the residents of the property, and they were issued an on-scene Notice of Unlicensed Operation. See Jonacin Jules and Fifie Chandler, Notice of Unlicensed Operation (July 9, 2012) (on file in EB-FIELDSCR-12-00004798) (warning that operation of an unlicensed radio station violates Section 301 of the Act and could subject the violators to monetary forfeitures, seizure of equipment, and possible arrest).

⁷ Florida Department of State Division of Corporations Homepage, <http://www.sunbiz.org/> (last visited Oct. 12, 2012).

⁸ See, e.g., Facebook page at www.facebook.com/RadioToucheDouce (last visited Oct. 12, 2012) (“Touche Douce does it all. Our radio station and wireless store is located at [address redacted], Miami, FL 33161 . . . Make sure listen to the radio show on 90.1 . . . DJ Paz Official Birthday Bash . . . [phone number redacted].”); Myspace page at www.myspace.com/radiotouchedouce (last visited Oct. 12, 2012) (“Touche Douce 90.1 FM . . . For more information call [phone number redacted] . . .”); Twitter page at <http://twitter.com/#!/touchedouce/> (last visited Oct. 12, 2012) (“tweet” from “touchedouce” states “Dj Paz live on Touchedouce 901fm”). See also Lexis Nexis Investigative Portal Homepage, <http://www.lexisnexis.com/government/solutions/investigative/>, Person Report (last visited Oct. 12, 2012).

⁹ See, e.g., Facebook page at www.facebook.com/paz.touchedouce (last visited Oct. 12, 2012) (showing a photograph of Mr. Polynice with caption “Worked at radio touchedouce”); Myspace page at www.myspace.com/radiotouchedouce/photos (last visited Oct. 12, 2012) (numerous photographs of Mr. Polynice identified as DJ “Paz”); Belfim website (Haiti Internet Movie Database) at <http://www.belfim.com/moun.php/1659> (last visited Oct. 12, 2012) (photograph of Mr. Polynice by “Hi, my name is Fabrice Polynice . . . Fabrice Polynice, Haitian DJ turned actor, is better known as Paz, the host of Radio Touchem Douce in Miami, Florida”).

State of Florida. In 2006, Mr. Polynice was convicted and sentenced to one year of community supervision by the State of Florida for violating a state statute that prohibits individuals from operating an unlicensed radio station in the State.¹⁰

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.¹¹ 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.¹² 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,¹³ and the Commission has so interpreted the term in the Section 503(b) context.¹⁴ The Commission may also assess a forfeiture for violations that are merely repeated, and not willful.¹⁵ The term “repeated” means the commission or omission of such act more than once or for more than one day.¹⁶

A. Unlicensed Broadcast Operations

6. The evidence in this case is sufficient to establish that Mr. Polynice 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.¹⁷ As the record shows, on six different days during March to July 2012, agents from the Miami Office determined that an unlicensed radio station was operating on the frequency 90.1 MHz from three different locations in North Miami, Florida. A review of the Commission’s records revealed that no license or authorization was issued to

¹⁰ LexisNexis Investigative Portal Homepage, <http://www.lexisnexis.com/government/solutions/investigative/>, Person Report (last visited May 24, 2012). On November 18, 2006, Mr. Polynice was arrested by Miami-Dade Police for illegal radio transmission and interference (Miami-Dade Court Case Number F06038860) and sentenced to one year community supervision (Florida Department of Corrections Case Number 0638856).

¹¹ 47 U.S.C. § 503(b).

¹² 47 U.S.C. § 312(f)(1).

¹³ 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”).

¹⁴ 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).

¹⁵ 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).

¹⁶ 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.

¹⁷ 47 U.S.C. § 301.

anyone to operate a radio station on 90.1 MHz at any of these locations. On multiple days, agents from the Miami Office heard the station identify itself on the air as “Touche Douce” and announce Mr. Polynice’s personal telephone number as the station’s telephone number. The agents also heard a DJ identify himself live on the air as DJ “Paz.” In this regard, the agents found several webpages identifying Mr. Polynice as DJ “Paz” and connecting “ToucheDouche” to his address of record and phone number.¹⁸ The totality of the evidence convinces us that Mr. Polynice is DJ “Paz” and that it was he who operated the unlicensed station. Because Mr. Polynice consciously operated the station and did so on more than one day, the apparent violations of the Act were both willful and repeated. We therefore conclude, based on the evidence before us, that Mr. Polynice 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 \$10,000.¹⁹ 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.²⁰ In doing so, we find that the violations here warrant a proposed forfeiture above the base amount. The record shows that Mr. Polynice has a history of operating a radio station without a license, which demonstrates a complete disregard for Federal and State authorities and their laws. Despite being arrested and convicted (in 2006) for violating the State of Florida’s prohibition against operating an unlicensed radio station within the State, Mr. Polynice continued to operate an unlicensed radio station at three separate locations in North Miami. Indeed, Mr. Polynice continued to operate his station from another location after his radio transmitting equipment at a previous location had already been seized by federal marshals. Thus, there is no dispute that Mr. Polynice was aware that his actions were illegal and that he intentionally engaged in efforts—by moving his station from one location to another—to evade detection from Federal and State authorities. Based on the evidence before us, including consideration of the egregiousness of the violations, the history of prior offenses, and the degree of culpability, we find that the violations here warrant a total upward adjustment of \$15,000.²¹ Applying the *Forfeiture Policy Statement*, Section 1.80 of the Rules, and the statutory factors to the instant case, we conclude that Mr. Polynice is apparently liable for a total forfeiture of \$25,000. We further caution Mr. Polynice 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.²²

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,

¹⁸ The record evidence also includes public websites where Mr. Polynice is seen promoting the station and identifying himself as DJ “Paz.” See *supra* note 9.

¹⁹ *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.

²⁰ 47 U.S.C. § 503(b)(2)(E).

²¹ See, e.g., *Whisler Fleurinor*, Notice of Apparent Liability for Forfeiture, 27 FCC Rcd 489 (Enf. Bur. 2012) (proposing \$25,000 forfeiture for repeat unlicensed operations, in violation of Section 301 of the Act, and after issuance of forfeiture order for multiple violations of the same).

²² See 47 U.S.C. §§ 401, 501, 503, 510.

Fabrice Polynice is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of twenty five thousand dollars (\$25,000) for violations of Section 301 of the Act.²³

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, Fabrice Polynice **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. Mr. Polynice shall 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.²⁴ 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. 20554.²⁵ 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.²⁶ 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. Mr. Polynice also shall e-mail the written response to SCR-Response@fcc.gov.

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

²⁴ An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

²⁵ See 47 C.F.R. § 1.1914.

²⁶ 47 C.F.R. §§ 1.16, 1.80(f)(3).

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 Fabrice Polynice at his address of record.

FEDERAL COMMUNICATIONS COMMISSION

Steven DeSena
Resident Agent
Miami Office
South Central Region
Enforcement Bureau