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

In the Matter of	)	
	)	
Jeffrey Darius	)	File No.: EB-11-MA-0188
	)	NAL/Acct. No.: 201232600008
Miami, Florida	)	FRN: 0021554308
	)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: March 6, 2012 **Released:** March 6, 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 Jeffrey Darius 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 88.7 MHz from a rooftop suite in Miami, Florida. We conclude that Mr. Darius is apparently liable for a forfeiture in the amount of fifteen thousand dollars ($15,000).

II. BACKGROUND

2. On September 29, 2011, in response to a complaint of interference by AT&T Mobility, agents from the Enforcement Bureau's Miami Office (Miami Office) observed two antennas typically used by unlicensed broadcast stations mounted on the roof of a building in Miami, Florida. Agents interviewed the building owner, who stated that the rooftop suite was rented to Jeffrey Darius. The tenant listed in the lease for the rooftop suite was an entity called "Blaze," but Mr. Darius signed the lease as guarantor for Blaze and listed his title as "C.E.O." Agents left a hand-delivered Notice of Unlicensed Operation (NOUO) addressed to Mr. Darius with the building owner, who stated he would deliver the notice to Mr. Darius. Later on September 29, 2011, an agent with the Miami Office heard transmissions on the frequency 88.7 MHz in which the station identified itself as "88.7 Da Blaze FM." The station's phone number announced on the air matched the phone number for Mr. Darius provided by the building owner.

3. On November 3, December 1, and December 7, 2011, agents from the Miami Office used direction-finding techniques to locate the source of radio frequency transmissions on the frequency 88.7 MHz to an FM transmitting antenna mounted on the roof of the building in Miami previously identified on September 29, 2011. On November 3, and December 7, 2011, the agents determined that the signals on 88.7 MHz exceeded the limits for operation under Part 15 of the Commission's rules (Rules),[2] and therefore required a license. Commission records showed no authorization issued to Mr. Darius or to anyone for operation of an FM broadcast station at or near this address.

---

[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.

4. On December 9, 2011, agents from the Miami Office met with the building owner, who moved the unlicensed station's transmitting equipment, which consisted of an FM power amplifier, an FM exciter, and transmitting antenna, from the rooftop to a storage room. That same day, the agents interviewed Mr. Darius in the building, and he admitted that: (1) the transmitting equipment was his; (2) he operated the station with a partner; and (3) that he was a disc jockey for the station previously operating on 88.7 MHz. The phone number provided by Mr. Darius to the agents matched the phone number for the station announced on the air on "88.7 Da Blaze FM." Mr. Darius also stated that he was aware that he needed a license to operate the station.

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.[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 Operations

6. 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] On September 29, November 3, December 1, and December 7, 2011, Mr. Darius operated an unlicensed radio station on the

---

[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.

frequency 88.7 MHz from a rooftop space he rented on behalf of an entity for which he served as guarantor and "C.E.O." Mr. Darius admitted owning the transmitting equipment and operating the unlicensed station. A review of the Commission's records revealed that Mr. Darius did not have a license to operate a radio station at this location. Because Mr. Darius consciously operated the station and on more than one day, the apparent violation of the Act was both willful and repeated. Based on the evidence before us, we find that Mr. Darius 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.[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] In doing so, we find that the violations here warrant a proposed forfeiture above the base amount. The fact that Mr. Darius repeatedly operated an unlicensed station when he knew that such action was unlawful—based on his own admission and after issuance of a NOUO—demonstrates a deliberate disregard for the Act and the Commission's requirements. Thus, we find that an additional upward adjustment of $5,000 in the forfeiture amount is warranted.[12] Applying the *Forfeiture Policy Statement*, Section 1.80 of the Rules, and the statutory factors to the instant case, we conclude that Mr. Darius is apparently liable for a forfeiture in the amount of $15,000.

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, Jeffrey Darius is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of fifteen thousand dollars ($15,000) for violations of Section 301 of the Act.[13]

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, Jeffrey Darius **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 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

---

[10] *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.

[11] 47 U.S.C. § 503(b)(2)(E).

[12] *See, e.g., Robert Brown,* Forfeiture Order, 26 FCC Rcd 6854 (Enf. Bur., Northeast Region 2011) (imposing a $15,000 forfeiture for violations of Section 301), *aff'g* Notice of Apparent Liability for Forfeiture, 25 FCC Rcd 13740 (Enf. Bur., Boston Office 2010) (petition for reconsideration pending); *Loyd Morris,* Forfeiture Order, 26 FCC Rcd 6856 (Enf. Bur., Northeast Region 2011) (imposing a $15,000 forfeiture for violations of Section 301), *aff'g* Notice of Apparent Liability for Forfeiture, 25 FCC Rcd 13736 (Enf. Bur., Boston Office 2010) (petition for reconsideration pending).

[13] 47 U.S.C. §§ 301, 503(b); 47 C.F.R. §§ 0.111, 0.204, 0.311, 0.314, 1.80.

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.[14] For questions about payment procedures, contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: ARINQUIRIES@fcc.gov. Jeffrey Darius shall send electronic notification on the date said payment is made to SCR-Response@fcc.gov.

11. 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.[15] 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.

12. 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.

13. **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 Jeffrey Darius at his address of record.

FEDERAL COMMUNICATIONS COMMISSION

Steven DeSena
Resident Agent
Miami Office
South Central Region
Enforcement Bureau

[14] *See* 47 C.F.R. § 1.1914.

[15] 47 C.F.R. §§ 1.16, 1.80(f)(3).