

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

In the Matter of)	
)	
Arthur Lee Young)	File No.: EB-FIELDSCR-12-00001026
)	NAL/Acct. No.: 201232480003
Cosby, TN)	FRN: 0021636261
)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: March 27, 2012

Released: March 27, 2012

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

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture (NAL), we find that Arthur Lee Young apparently willfully and repeatedly violated Section 301 of the Communications Act of 1934, as amended (Act), and apparently willfully violated Section 303(n) of the Act,¹ by operating an unlicensed radio transmitter on the frequency 87.9 MHz and refusing to allow an inspection of his radio station. We conclude that Mr. Young is apparently liable for a forfeiture in the amount of twenty-two thousand dollars (\$22,000).

II. BACKGROUND

2. On April 14, 2011, agents from the Enforcement Bureau's Atlanta Office (Atlanta Office) used direction-finding techniques to locate the source of radio frequency transmissions on the frequency 87.9 MHz to Mr. Young's residence in Cosby, Tennessee. The agents determined that the signals on 87.9 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. Young or to anyone for operation of a broadcast station at or near this address. During an inspection of the radio station, Mr. Young admitted that he owned the radio equipment transmitting on 87.9 MHz and voluntarily relinquished it.³ Thereafter, the Atlanta Office sent Mr. Young a letter, informing him that his operation of an unlicensed broadcast station was in violation of the Act and that such operations must cease immediately.⁴

3. On February 29, 2012, an agent from the Atlanta Office again used direction-finding techniques to locate the source of radio frequency transmissions on the frequency 87.9 MHz to Mr. Young's residence. The agent determined that the signals on 87.9 MHz exceeded the limits for operation under Part

¹ 47 U.S.C. §§ 301, 303(n).

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 15.209 of the Rules provides that non-licensed broadcasting in the 30-88 MHz band is permitted only if the field strength of the transmission does not exceed 100 μ V/m at three meters. 47 C.F.R. § 15.209.

³ In addition, our records show that, in 2004, we informed Mr. Young that his unlicensed broadcast operation was in violation of the Act and, thereby, ordered him to cease the unauthorized operation. *See Arthur Young*, Notice of Unlicensed Radio Operation, issued October 13, 2004 (on file in EB-04-AT-148).

⁴ *Arthur Young*, Warning of Unlicensed Operation, issued April 19, 2011 (on file in EB-11-AT-0032).

15 of the Rules,⁵ and therefore required a license. Commission records still showed no authorization issued to Mr. Young or to anyone for operation of a broadcast station at or near this address. On February 29, 2012, Mr. Young and his wife met with the agent outside of his residence, but refused to speak to the agent. Mr. Young's wife, however, acknowledged that Mr. Young was operating an unlicensed radio station from their residence. The agent asked to inspect the station, but Mr. Young said "no" and walked away. The agent informed Mr. Young that refusing to allow an inspection is a separate violation of the applicable law.

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.⁶ 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.⁷ 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,⁸ and the Commission has so interpreted the term in the Section 503(b) context.⁹ The Commission may also assess a forfeiture for violations that are merely repeated, and not willful.¹⁰ The term "repeated" means the commission or omission of such act more than once or for more than one day.¹¹

A. Unlicensed Operations

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.¹² On April 14, 2011, and February 29, 2012, Mr. Young operated an unlicensed radio station on the frequency 87.9 MHz from his residence. Mr. Young admitted owning and operating the unlicensed radio station on April 14, 2011, and Mr. Young's wife told the agent that he was operating the unlicensed radio station on February 29, 2012. A review of the Commission's records revealed that Mr. Young did not have a license to operate a

⁵ See *supra* note 2.

⁶ 47 U.S.C. § 503(b).

⁷ 47 U.S.C. § 312(f)(1).

⁸ 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 . . .").

⁹ 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).

¹⁰ 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).

¹¹ 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.

¹² 47 U.S.C. § 301.

radio station at this location. Because Mr. Young consciously operated the station, and did so on more than one day, the apparent violations of the Act were both willful and repeated. Based on the evidence before us, we find that Mr. Young apparently willfully and repeatedly violated Section 301 of the Act by operating radio transmission equipment without the required Commission authorization.

B. Refusal to Allow Inspection

6. Section 303(n) of the Act states that the Commission has authority to inspect radio installations associated with stations required to be licensed or authorized by the Act.¹³ On February 29, 2012, Mr. Young refused an official request by a Commission agent to inspect the radio station located in his residence and in spite of being informed that such refusal was a separate violation of the applicable law. Because Mr. Young explicitly refused a reasonable and duly made request by a Commission agent, we find the apparent violation willful. Based on the evidence before us, we find that, on February 29, 2012, Mr. Young apparently willfully violated Section 303(n) of the Act by refusing an official and duly made request by a Commission agent to inspect the radio installation located inside his residence while the station was in operation.

C. 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, and for refusing to allow inspection is \$7,000.¹⁴ 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.¹⁵ In doing so, we find that the violations here warrant a proposed forfeiture above the base amount. The fact that Mr. Young repeatedly operated an unlicensed station—and also refused to allow a lawful inspection of his equipment—when he knew that such actions were unlawful demonstrate 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.¹⁶ Applying the *Forfeiture Policy Statement*, Section 1.80 of the Rules, and the statutory factors to the instant case, we conclude that Mr. Young is apparently liable for a total forfeiture in the amount of \$22,000. We further caution Mr. Young that future violations may be subject to more severe enforcement action, including but not limited to larger monetary forfeitures, criminal prosecution, and the *in rem* seizure of his equipment.¹⁷

¹³ 47 U.S.C. § 303(n).

¹⁴ *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.

¹⁵ 47 U.S.C. § 503(b)(2)(E).

¹⁶ *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); *Lloyd 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).

¹⁷ *See* 47 U.S.C. §§ 401, 501, 503, 510.

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, Arthur Lee Young is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of twenty-two thousand dollars (\$22,000) for violations of Sections 301 and 303(n) of the Act.¹⁸

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, Arthur Lee Young **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 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. 20554.¹⁹ For questions about payment procedures, contact the Financial Operations Group Help Desk at 1-877-480-3201 or E-mail: ARINQUIRIES@fcc.gov. If payment is made, Arthur Lee Young 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 1.80(f)(3) and 1.16 of the Rules.²⁰ Mail the written statement to Federal Communications Commission, Enforcement Bureau, South Central Region, Atlanta Office, 3575 Koger Blvd, Suite 320, Duluth, GA 30096 and include the NAL/Acct. No. referenced in the caption. Arthur Lee Young also shall e-mail the written response 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.

¹⁸ 47 U.S.C. §§ 301, 303(n), 503(b); 47 C.F.R. §§ 0.111, 0.204, 0.311, 0.314, 1.80.

¹⁹ See 47 C.F.R. § 1.1914.

²⁰ 47 C.F.R. §§ 1.16, 1.80(f)(3).

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 Arthur Lee Young at his address of record.

FEDERAL COMMUNICATIONS COMMISSION

Douglas Miller
District Director
Atlanta Office
South Central Region
Enforcement Bureau