

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

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| In the Matter of |) | File No.: EB-11-MA-0133 |
| |) | |
| Robenson Thermitus |) | NAL/Acct. No.: 201232600004 |
| |) | |
| Miami, Florida |) | FRN: 0021426010 |
| |) | |

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: January 20, 2012

Released: January 20, 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 Robenson Thermitus 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 98.7 MHz in Miami, Florida. We conclude that Mr. Thermitus is apparently liable for a forfeiture in the amount of ten thousand dollars (\$10,000).

II. BACKGROUND

2. On July 11, 2011, in response to a complaint, 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 98.7 MHz to an FM transmitting antenna mounted in a tree at the back of a residence in Miami, Florida. The agents observed that, when tuned to 98.7 MHz, the Radio Data System (RDS) display on their vehicle radio showed "98.7 FM ENERGY." The agents determined that the signals being broadcast exceeded the limits for operation under Part 15 of the Commission's rules (Rules), and therefore required a license.² A review of the Commission's records revealed that no license or authorization was issued to Mr. Thermitus or anyone else to operate a radio station on 98.7 MHz at this location. Subsequently, an agent from the Miami Office found that the station's website, www.energyfm987.com, listed "DJ Oneway" as a host of Energy FM and the number "1 786.357.5347" as DJ Oneway's contact phone number.³ The domain name, energyfm987.com, was registered to Robenson Thermitus and listed 786-357-5347 as his contact phone number.⁴

3. On August 16, 2011, agents from the Miami Office returned to the same residence in

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 μ V/m at three meters. 47 C.F.R. § 15.239.

³ 98.7 FM Energy Homepage, www.energyfm.com (last visited July 18-19, 2011).

⁴ Go Daddy Homepage, http://who.godaddy.com/whois.aspx?domain=energyfm987.com&prog_id=GoDaddy (last visited July 19, 2011).

Miami, Florida where the station was located on July 11, 2011. The agents observed that the antenna was still mounted in the tree, and that a coaxial cable from the antenna entered the back of the residence. The agents interviewed the owner of the residence, who stated that a man known as “Oneway” installed and owned the radio transmitting equipment, which was located in a locked room in the back of her house. The owner then called “Oneway” from her cellular phone and handed the phone to an agent. The man on the phone stated to the agent that he would make sure the equipment was removed, but did not admit to being the operator or owner of station. The agent observed that the phone number “786-357-5347” and “Radio Iternette” were displayed on the phone during the call. After the agents left the residence, they observed that the radio station on the frequency 98.7 MHz had resumed operations. They used direction-finding techniques to locate the source of radio frequency transmissions on the frequency 98.7 MHz to the same FM transmitting antenna mounted in the tree at the back of the residence.

4. Florida Department of State Division of Corporations records list Mr. Thermitus as the registered agent for a business called “DJ Oneway Inc.”⁵ Florida Motor Vehicle Registration records show Mr. Thermitus registered a vehicle in 2007 with the license plate number “DJ1WAY.”⁶ DJ Oneway’s birthday listed on Facebook⁷ matches Mr. Thermitus’s date of birth listed on official records.⁸ DJ Oneway’s phone number is listed on Facebook as “1 786.357.5347 Mobile.”⁹ A cached Facebook page “Taste Café By DJ Oneway” stated “DJ Oneway Live on the Air Every Morning from 8:00 AM Click the Link www.energyfm98.7.com to See Me Live From the Studio.”¹⁰ Agents from the Miami Office also identified Mr. Thermitus as DJ Oneway by comparing his Florida driver’s license photograph to pictures of DJ Oneway posted on the Internet.¹¹

III. DISCUSSION

5. Section 503(b) of the Act¹² 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. 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.¹³ 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,¹⁴ and the Commission has so interpreted the term in the Section

⁵ Florida Department of State Division of Corporations Homepage, <http://www.sunbiz.org/> (last visited Aug. 17, 2011).

⁶ Lexis Nexis Investigative Portal Homepage, <http://www.lexisnexus.com/government/solutions/investigative/>, Motor Vehicle Registrations database (last visited Aug. 17, 2011).

⁷ Facebook Homepage, www.facebook.com/onthemix.djoneway (last visited Sept. 23, 2011).

⁸ Lexis Nexis Investigative Portal Homepage, <http://www.lexisnexus.com/government/solutions/investigative/> (last visited Aug. 17, 2011).

⁹ Facebook Homepage, www.facebook.com/onthemix.djoneway (last visited Sept. 23, 2011).

¹⁰ Facebook Homepage, <http://www.facebook.com/group.php?gid=107879649241349> (cached on Google) (last visited Sept. 23, 2011).

¹¹ MySpace Homepage, www.myspace.com/djonewayonthemix/photos (last visited Sept. 23, 2011).

¹² 47 U.S.C. § 503(b).

¹³ 47 U.S.C. § 312(f)(1).

¹⁴ 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

503(b) context.¹⁵ The Commission may also assess a forfeiture for violations that are merely repeated, and not willful.¹⁶ The term “repeated” means the commission or omission of such act more than once or for more than one day.¹⁷

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.¹⁸ 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.”¹⁹ In other words, the use of the word “operate” in Section 301 of the Act captures not just the “actual, mechanical manipulation of radio apparatus,”²⁰ but also operation of a radio station generally.²¹ 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.”²²

7. Based on the record evidence in this case, we find that Mr. Thermitus apparently willfully and repeatedly violated Section 301 of the Act, by operating an unlicensed radio transmitter on the frequency 98.7 MHz in Miami, Florida. On July 11 and August 16, 2011, agents from the Miami Office determined that an unlicensed radio station on the frequency 98.7 MHz operated from a residence in Miami, Florida. A review of the Commission’s records revealed that no license or authorization was issued to anyone to operate a radio station on 98.7 MHz at this location. Under Section 301, Mr. Thermitus can be said to have “operated” the unlicensed radio station on 98.7 MHz because he demonstrated control over the general conduct or management of the station. Specifically, the facts show that Mr. Thermitus was responsible for operation of the station. The owner of the residence housing the station stated that a man named “Oneway” installed and owned the radio transmitting equipment in her home. The station’s website and the information and images found on social networking websites establish that someone known as “DJ Oneway” hosted a daily radio program on 98.7 MHz. The phone number and date of birth for DJ Oneway listed on the Internet matches Mr. Thermitus’s phone number and birthdate listed in official records. Mr. Thermitus was identified by agents from the Miami Office as “DJ Oneway” by comparing the photographs of “DJ Oneway” on the Internet to Mr. Thermitus’s Florida driver’s license photograph. Mr. Thermitus registered the domain name for the station and a business known as “DJOneway Inc.” Mr. Thermitus also

the Commission’s application of those terms . . .”).

¹⁵ See, e.g., *Application for Review of Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991) (*Southern California Broadcasting Co.*).

¹⁶ 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).

¹⁷ *Southern California Broadcasting Co.*, 6 FCC Rcd at 4388, para. 5; *Callais Cablevision, Inc.*, 16 FCC Rcd at 1362, para. 9.

¹⁸ 47 U.S.C. § 301.

¹⁹ 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).

²⁰ *Id.*

²¹ *Id.* See also 47 U.S.C § 307(c)(1).

²² 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).

registered a vehicle with the Florida license plate number “DJ1WAY.” All of these facts convince us that Mr. Thermitus operated the unauthorized station. Furthermore, because Mr. Thermitus consciously operated the station on more than one day, we find the apparent violation was not only willful, but also repeated. Therefore, based on the foregoing, we find that Mr. Thermitus apparently willfully and repeatedly violated Section 301 of the Act by operating radio transmission equipment without the required Commission authorization.

8. 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 \$10,000.²³ 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.²⁴ Applying the *Forfeiture Policy Statement*, Section 1.80 of the Rules, and the statutory factors to the instant case, we conclude that Mr. Thermitus is apparently liable for a forfeiture of \$10,000.

IV. ORDERING CLAUSES

9. 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, Robenson Thermitus 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.²⁵

10. **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, Robenson Thermitus **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

11. 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. 20554.²⁶ If you have questions regarding payment procedures, please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: ARINQUIRIES@fcc.gov. If payment is made, Robenson Thermitus will send electronic notification on the date said payment is made to SCR-Response@fcc.gov.

12. The written statement seeking reduction or cancellation of the proposed forfeiture, if any,

²³ *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.

²⁴ 47 U.S.C. § 503(b)(2)(E).

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

²⁶ *See* 47 C.F.R. § 1.1914.

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.²⁷ Mail the written statement to Federal Communications Commission, Enforcement Bureau, South Central Region, Miami Office, P.O. Box 520617, Miami, FL 33152, and include the NAL/Acct. number referenced in the caption. Robenson Thermitus also shall email 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 regular mail to Robenson Thermitus at his address of record.

FEDERAL COMMUNICATIONS COMMISSION

Steven DeSena
Resident Agent
Miami Office
South Central Region
Enforcement Bureau

²⁷ 47 C.F.R. §§ 1.16, 1.80(f)(3).