

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

In the Matter of)	
)	
Luis Ernesto Rivas, Jr.)	File No.: EB-FIELDSCR-12-00001177
)	NAL/Acct. No.: 201232600010
Miami, Florida)	FRN: 0021815568
)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: June 5, 2012

Released: June 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 Luis Ernesto Rivas, Jr., 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 89.1 MHz in Miami, Florida. We conclude that Mr. Rivas is apparently liable for a forfeiture in the amount of fifteen thousand dollars (\$15,000).

II. BACKGROUND

2. On March 2 and March 9, 2012, 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 89.1 MHz to an FM transmitting antenna mounted on the rooftop of a condominium building in Miami, Florida. On March 2, 2012, the agents determined that the signals on 89.1 MHz exceeded the limits for operation under Part 15 of the Commission's rules (Rules),² and therefore required a license. Commission records showed that no authorization was issued to Mr. Rivas or to anyone else for operation of an FM broadcast station at or near this address. While monitoring the station on March 9, 2012, agents from the Miami Office heard an advertisement referring to "The Streets FM."

3. That same day, the Miami Office agents went to the roof of the building that the agents' direction-finding techniques identified as the source of the unlicensed transmission, and were accompanied by staff of the building's condominium association. The agents observed radio transmitting equipment on the building's rooftop, including an FM transmitter connected via coaxial cable to an FM transmitting antenna and a laptop. The laptop's screen displayed a Facebook webpage stating "UNDERGROUND STATION IN MIAMI @ USTREAM: GO TO OUR WEBSITE WWW.THESTREETSFM.COM...ON 89.1 MIAMI #1 UNDERGROUND STATION . . ." Later that day, an individual identifying himself as "June Rivas" attempted to claim the radio transmitting equipment from the condominium association. A staff member of the condominium association identified a picture of Mr. Rivas as "June Rivas."

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. An agent from the Miami Office thereafter found the station's website, www.thestreetsfm.com, which referred to "The Streets Ent., LLC." Florida Department of State, Division of Corporation's records list Mr. Rivas as a managing member of an inactive business called "The Streets Ent., LLC."³ Agents also found a webpage that stated that "Junior Rivas" was the "CEO" of "thestreetsfm."⁴ The webpage for "thestreetsfm" also contained a document describing payment terms for the station, which listed Mr. Rivas's home address. Agents from the Miami Office also identified Mr. Rivas by comparing his Florida driver's license photograph to pictures of "Junior Rivas" posted on the Internet.⁵

III. DISCUSSION

5. Section 503(b) of 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 Broadcast 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.¹² For the purposes of

³ Florida Department of State, Division of Corporations Homepage, www.sunbiz.org (last visited March 26, 2012).

⁴ LinkedIn webpage, www.linkedin.com (last visited Mar. 12, 2012) (on file EB-10-MA-0097).

⁵ Facebook homepage, www.facebook.com/THESTREETSFM (last visited Sept. 1, 2011) (on file EB-10-MA-0097).

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.

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.”¹³ 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,”¹⁴ but also operation of a radio station generally.¹⁵ 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.”¹⁶

7. Based on the record evidence in this case, we find that Mr. Rivas apparently willfully and repeatedly violated Section 301 of the Act, by operating an unlicensed radio transmitter on the frequency 89.1 MHz in Miami, Florida. On March 2 and March 9, 2012, agents from the Miami Office determined that an unlicensed radio station on the frequency 89.1 MHz operated from a condominium rooftop 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 89.1 MHz at this location. Under Section 301, Mr. Rivas can be said to have “operated” the unlicensed radio station on 89.1 MHz because the evidence shows that Mr. Rivas exercised control over the general conduct or management of the station. Specifically, the facts show that Mr. Rivas was responsible for operation of the station. A staff member of the condominium association for the building, where the unlicensed station was located, stated that Mr. Rivas identified himself as “June Rivas” while attempting to collect the radio transmitting equipment from the rooftop. The unlicensed station’s website describes itself as “thestreetsfm,” and “Junior Rivas” is described as the CEO of “thestreetsfm.” Mr. Rivas’s picture matches that of “Junior Rivas” on the Internet. Mr. Rivas is also the managing member of “The Streets Ent., LLC,” and Mr. Rivas’s home address is listed on the station’s webpage. All of these facts indicate that Mr. Rivas consciously operated and/or otherwise was involved in the general conduct or management of the unauthorized station and did so on more than one day. Therefore, we find that Mr. Rivas apparently willfully and repeatedly violated Section 301 of the Act by operating radio transmission equipment without the required Commission authorization.

B. Proposed Forfeiture Amount

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 \$10,000.¹⁷ 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.¹⁸

¹³ 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).

¹⁴ *Id.*

¹⁵ *Id.* See 47 U.S.C. § 307(c)(1).

¹⁶ 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).

¹⁷ *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.

¹⁸ 47 U.S.C. § 503(b)(2)(E).

9. We find that the violations here warrant a proposed forfeiture above the base amount. Commission records show that the Miami Office previously issued a *Notice of Unlicensed Operation* to Mr. Rivas for operation of an unlicensed station on the same frequency (i.e., 89.1 MHz) at a commercial property in Opa-locka, Florida on November 6, 2007.¹⁹ The fact that Mr. Rivas continued to operate an unlicensed station after being put on notice that his actions contravened the Act, the Commission's rules, and related Commission orders demonstrates a deliberate disregard for the Commission's requirements. Thus, we find that an upward adjustment in the forfeiture amount of \$5,000 is warranted.²⁰ Applying the *Forfeiture Policy Statement*, Section 1.80 of the Rules, and the statutory factors to the instant case, we conclude that Mr. Rivas is apparently liable for a forfeiture in the amount of \$15,000.

IV. ORDERING CLAUSES

10. 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, Luis Ernesto Rivas, Jr. 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 Rules.²¹

11. **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, Luis Ernesto Rivas, Jr. **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

12. 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. Regardless of the form of payment, 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. 20554.²² If you have questions regarding payment procedures, please contact the Financial Operations Group Help Desk at 1-877-480-3201 or E-mail: ARINQUIRIES@fcc.gov. Luis Ernesto Rivas, Jr. will also send electronic notification on the date said payment is made to SCR-Response@fcc.gov.

13. 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

¹⁹ See *Luis Ernesto Rivas, Jr.*, Notice of Unlicensed Operation (Enf. Bur. rel. Nov. 6, 2007) (on file in EB-07-MA-079).

²⁰ See *Robert Brown*, Forfeiture Order, 26 FCC Rcd 6854 (Enf. Bur. 2011), *aff'g*, Notice of Apparent Liability for Forfeiture, 25 FCC Rcd 13740 (Enf. Bur. 2010) (petition for reconsideration pending); *Loyd Morris*, Forfeiture Order, 26 FCC Rcd 6856 (Enf. Bur. 2011), *aff'g*, Notice of Apparent Liability for Forfeiture, 25 FCC Rcd 13736 (Enf. Bur. 2010) (petition for reconsideration pending).

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

²² See 47 C.F.R. § 1.1914.

to Sections 1.16 and 1.80(f)(3) of the Rules.²³ 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. Luis Ernesto Rivas, Jr. also shall e-mail the written response to SCR-Response@fcc.gov.

14. 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.

15. **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 Luis Ernesto Rivas, Jr. at his address of record.

FEDERAL COMMUNICATIONS COMMISSION

Stephanie Dabkowski
Resident Agent
Miami Office
South Region
Enforcement Bureau

²³ 47 C.F.R. §§ 1.16, 1.80(f)(3).