

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

In the Matter of)
Albert R. Knighten, Jr.) File No.: EB-11-TP-0132
Fort Myers, Florida) NAL/Acct. No.: 201232700004
) FRN: 0021817952
)

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: June 5, 2012

Released: June 5, 2012

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

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture (NAL), we find that Albert R. Knighten, 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 107.5 MHz from his residence in Fort Myers, Florida. We conclude that Mr. Knighten is apparently liable for a forfeiture in the amount of fifteen thousand dollars (\$15,000).

II. BACKGROUND

2. On December 1, 2011, in response to a complaint from an anonymous caller, agents from the Enforcement Bureau's Tampa Office (Tampa Office) used direction-finding techniques to locate the source of radio frequency transmissions on the frequency 107.5 MHz to an FM transmitting antenna mounted on a tower at Mr. Knighten's residence in Fort Myers, Florida. Agents determined that the signals on 107.5 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. Knighten or to anyone else for operation of an FM broadcast station at or near this address.

3. On December 9, 2011, agents from the Tampa Office used direction-finding techniques to confirm that the unlicensed station on 107.5 MHz was still in operation from the same location identified on December 1, 2011. Local law enforcement executed a search warrant for the premises, and agents from the Tampa Office interviewed Mr. Knighten, who was present in his residence when the station was on the air. Agents from the Tampa Office also inspected the unlicensed radio station located in the premises before the equipment was seized by local law enforcement. Mr. Knighten admitted to purchasing and installing the radio equipment, and claimed to be the sole person operating the unlicensed station from this location for over a month. The agents from the Tampa Office identified Mr. Knighten's voice as the person broadcasting over the air on December 1 and 9, 2012, and also found a video available

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.

over the Internet showing Mr. Knighten being interviewed about the station.³ During the interview, Mr. Knighten discussed the station's programming, encouraging interested listeners to tune in to the station, and acknowledged its unlicensed status.⁴

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.⁵ 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.⁶ 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,⁷ and the Commission has so interpreted the term in the Section 503(b) context.⁸ The Commission may also assess a forfeiture for violations that are merely repeated, and not willful.⁹ The term "repeated" means the commission or omission of such act more than once or for more than one day.¹⁰

A. Unlicensed Broadcast 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.¹¹ On December 1 and 9, 2011, agents from the Tampa Office determined that an unlicensed radio station on the frequency 107.5 MHz was operating from Mr. Knighten's residence in Fort Myers, Florida. On December 9, 2011, Mr. Knighten was present in his residence when the station was in operation and admitted to operating the

³ See <http://www.youtube.com/watch?v=hLKdgofwtuM> (uploaded Apr. 16, 2011) (last visited Apr. 23, 2012) (An interview with Mr. Knighten, in which he states: "[The] future of Dunbar Community Radio Service, we hope to be basically a licensed radio station. Until then, we work on a not to interfere basis.")

⁴ *Id.*

⁵ 47 U.S.C. § 503(b).

⁶ 47 U.S.C. § 312(f)(1).

⁷ 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").

⁸ 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).

⁹ 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).

¹⁰ 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.

¹¹ 47 U.S.C. § 301.

unlicensed station for more than a month. Mr. Knighten also admitted that he purchased and installed the radio transmitting equipment for the station and was solely responsible for the station. A review of the Commission's records revealed that Mr. Knighten did not have a license to operate a radio station at this location. Because Mr. Knighten 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. Knighten apparently willfully and repeatedly violated Section 301 of the Act by operating radio transmission equipment without the required Commission authorization.

B. Proposed Forfeiture Amount

6. 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 \$10,000.¹² 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.¹³ In doing so, we find that the violations here warrant a proposed forfeiture above the base amount. The record evidence in this case shows that Mr. Knighten wanted to obtain a license for his station and made public statements to that effect and, therefore, knew that his station was operating on an unlicensed basis.¹⁴ In spite of this knowledge, Mr. Knighten operated and publicly promoted the unlicensed station for over a month, in 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.¹⁵ Applying the *Forfeiture Policy Statement*, Section 1.80 of the Rules, and the statutory factors to the instant case, we conclude that Mr. Knighten is apparently liable for a forfeiture in the amount of \$15,000.

IV. ORDERING CLAUSES

7. 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, Albert R. Knighten, 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 Act.¹⁶

8. **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, Albert R. Knighten, 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 *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.

¹³ 47 U.S.C. § 503(b)(2)(E).

¹⁴ *See supra* note 3.

¹⁵ *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).

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

9. 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. 20554.¹⁷ For questions about payment procedures, contact the Financial Operations Group Help Desk at 1-877-480-3201 or E-mail: ARINQUIRIES@fcc.gov. Albert R. Knighten, Jr. shall send electronic notification on the date said payment is made to SCR-Response@fcc.gov.

10. 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.¹⁸ The written statement must be mailed to Federal Communications Commission, Enforcement Bureau, South Central Region, Tampa Office, 4010 W. Boy Scout Blvd. Suite 425, Tampa, Florida 33607, and must include the NAL/Acct. No. referenced in the caption. The written statement shall also be e-mailed to SCR-Response@fcc.gov.

11. 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.

12. **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 Albert R. Knighten, Jr. at his address of record.

FEDERAL COMMUNICATIONS COMMISSION

Ralph M. Barlow
District Director,
Tampa Office
Southeast Region
Enforcement Bureau

¹⁷ See 47 C.F.R. § 1.1914.

¹⁸ 47 C.F.R. §§ 1.16, 1.80(f)(3).