

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

In the Matter of)	
)	
Pierre Nixon Jean)	File No.: EB-FIELDSCR-12-00002174
)	NAL/Acct. No.: 201232600011
West Palm Beach, FL)	FRN: 0021841358
)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: June 14, 2012

Released: June 14, 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 Pierre Nixon Jean apparently willfully violated Section 301 of the Communications Act of 1934, as amended (Act),¹ by operating an unlicensed radio transmitter on the frequency 92.5 MHz in West Palm Beach, Florida. We conclude that Mr. Jean is apparently liable for a forfeiture in the amount of fifteen thousand dollars (\$15,000).

II. BACKGROUND

2. On February 21, 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 92.5 MHz to an FM transmitting antenna mounted on the roof of an apartment building in West Palm Beach, Florida. Agents heard the station identify itself on the air as "Exitfm.com." The agents determined that the signals on 92.5 MHz exceeded the limits for operation under Part 15 of the Commission's rules (Rules),² and therefore required a license. Commission records showed that no authorization was issued to Mr. Jean or to anyone else for operation of an FM broadcast station at or near this address.

3. Agents from the Miami Office learned from the property owner of the apartment building that Pierre Nixon Jean rented an apartment in the building from October 1, 2010 until March 31, 2012.³ The building owner identified a picture of Mr. Jean from the Internet as the person renting the apartment.⁴ The building owner stated that, in December 2011, he observed radio transmitting equipment in Mr. Jean's apartment when he entered the unit for a fire alarm issue. The building owner also stated that he

¹ 47 C.F.R. § 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.

³ Agents from the Miami Office obtained a copy of the lease and rental application for Mr. Jean's apartment.

⁴ The date of birth and social security information submitted in Mr. Jean's rental application for the apartment matched official records for Mr. Jean.

told Mr. Jean to remove the radio transmitting equipment after he spoke to the agent on March 12, 2012. On May 2, 2012, an agent from the Miami Office confirmed that the antenna had been removed from the apartment building rooftop.

4. Agents from the Miami Office also found additional information on the Internet connecting Mr. Jean to the unlicensed station. The contact number found on one of the station's websites matched the phone number listed by Mr. Jean on his rental application for the apartment.⁵ Another website for the unlicensed station contained an advertisement, which read: "Advertisement Contact Pe Niko"⁶ The Facebook page "Pierre Nixon Jean (Per Niko)" listed Mr. Jean as "director radio exitfm www.myexitfm.com Owner," and showed a picture of Mr. Jean as a disc jockey, standing behind the microphone in what appears to be a radio station studio.⁷

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.⁸ 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.⁹ 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,¹⁰ and the Commission has so interpreted the term in the Section 503(b) context.¹¹ The Commission may also assess a forfeiture for violations that are merely repeated, and not willful.¹² The term "repeated" means the commission or omission of such act more than once or for more than one day.¹³

⁵ See Radio Exit FM 92.5 FM, www.radioexitfm.com (last visited May 14, 2012).

⁶ MyExitFM, www.myexitfm.com (last visited Mar. 7, 2012).

⁷ Facebook, <https://www.facebook.com/people/Pierre-Nixon-Jean/100001580059336> (last visited Apr. 26, 2012).

⁸ 47 U.S.C. § 503(b).

⁹ 47 U.S.C. § 312(f)(1).

¹⁰ 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").

¹¹ 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).

¹² 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).

¹³ 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.

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.¹⁴ 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.”¹⁵ 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,”¹⁶ but also operation of a radio station generally.¹⁷ 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.”¹⁸

7. Based on the record evidence in this case, we find that Mr. Jean apparently willfully violated Section 301 of the Act, by operating an unlicensed radio transmitter on the frequency 92.5 MHz in West Palm Beach, Florida. On February 21, 2012, agents from the Miami Office determined that an unlicensed radio station on the frequency 92.5 MHz operated from an apartment building in West Palm Beach, Florida. A review of the Commission’s records revealed that no license or authorization was issued to anyone to operate a radio station on 92.5 MHz at this location. Under Section 301, Mr. Jean can be said to have “operated” the unlicensed radio station on 92.5 MHz because the evidence shows that Mr. Jean exercised control over the general conduct or management of the station. Specifically, the facts show that Mr. Jean was responsible for operation of the station. The property owner of the apartment building, where the unlicensed station was located, observed radio transmitting equipment in Mr. Jean’s apartment unit. The property owner also told Mr. Jean to remove the radio transmitting equipment from the building, which was done. The unlicensed station identified itself as “Exitfm.com,” and Mr. Jean’s telephone number was listed as the contact phone number on the station’s webpage.¹⁹ The webpage also identified Mr. Jean as the “director radio exitfm www.myexitfm.com Owner.”²⁰ All of these facts indicate that Mr. Jean consciously operated and/or otherwise was involved in the general conduct or management of the unlicensed station. Therefore, we find that Mr. Jean apparently willfully 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 \$10,000.²¹ In assessing

¹⁴ 47 U.S.C. § 301.

¹⁵ 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).

¹⁶ *Id.*

¹⁷ *Id.* See 47 U.S.C § 307(c)(1).

¹⁸ 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).

¹⁹ See *supra* note 5.

²⁰ See *supra* note 7.

²¹ *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*,

(continued....)

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.²² In doing so, we find that the violation here warrants a proposed forfeiture above the base amount. Our records show that, in September 2010, agents from the Miami Office previously warned Mr. Jean that his operation of an unlicensed station on 92.5 MHz at another location in Florida was unlawful.²³ The fact that Mr. Jean continued to operate after being put on notice that his unlicensed operation 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 additional upward adjustment of \$5,000 in the forfeiture amount is warranted.²⁴ Applying the *Forfeiture Policy Statement*, Section 1.80 of the Rules, and the statutory factors to the instant case, we conclude that Mr. Jean is apparently liable for a forfeiture in the amount of \$15,000.

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, Pierre Nixon Jean 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.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, Pierre Nixon Jean **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

11. The payment must be made by check or similar instrument, wire transfer, or credit card, and must include the Account Number and FRN referenced above. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must also be submitted. An FCC Form 159 may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>. When completing the FCC Form 159, enter the Account Number in block number 23A (call sign/other ID) and enter the letters "FORF" in block number 24A (payment type code). Payment by check or money order must be made payable to the order of the Federal Communications Commission. Such payments 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

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15 FCC Rcd 303 (1999); 47 C.F.R. § 1.80.

²² 47 U.S.C. § 503(b)(2)(E).

²³ On September 12, 2010, agents from the Miami Office issued a verbal warning (*see* Case No. EB-10-MA-0174) to a person identified as "DJ Nixon" for operation of an unlicensed radio station on 92.5 MHz at a house in West Palm Beach. Agents have now identified "DJ Nixon" as Mr. Jean from photographs of Mr. Jean posted on the Internet. In addition, on September 12, 2010, agents from the Miami Office observed a blue Ford taxicab parked in front of the house, which was the source of the unlicensed station, with a license plate that matched the information Mr. Jean provided on his apartment rental application.

²⁴ *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).

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

TREAS/NYC, and Account Number 27000001. 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 E-mail: ARINQUIRIES@fcc.gov. Pierre Nixon Jean shall also 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, 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.²⁷ 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. Pierre Nixon Jean also shall e-mail 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 first class mail to Pierre Nixon Jean at his address of record.

FEDERAL COMMUNICATIONS COMMISSION

Steven DeSena
Resident Agent
Miami Office
South Central Region
Enforcement Bureau

²⁶ See 47 C.F.R. § 1.1914.

²⁷ 47 C.F.R. §§ 1.16, 1.80(f)(3).