

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

In the Matter of)
Jeannine M. Mason) File No.: EB-FIELDWR-12-00004903
Licensee of Station KTZZ(FM),) NAL/Acct. No.: 201332800007
Conrad, Montana) FRN: 0022857825
) Facility ID No.: 81886
)

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: July 23, 2013

Released: July 24, 2013

By the District Director, Denver Office, Western Region, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture (NAL), we find that Jeannine M. Mason, licensee of Station KTZZ(FM), in Conrad, Montana (Station or KTZZ(FM)), apparently willfully and repeatedly violated Section 301 of the Communications Act of 1934, as amended (Act),¹ by operating a studio-transmitter link (STL) station without an FCC license. We conclude that Ms. Mason is apparently liable for a forfeiture in the amount of ten thousand dollars (\$10,000).

II. BACKGROUND

2. On August 10, 2012, an agent from the Enforcement Bureau’s Denver Office (Denver Office), in preparation for a routine inspection of KTZZ(FM), monitored the signal of an STL station on frequency 946.5 MHz, which, at that time, appeared associated with KTZZ(FM). The agent determined that the STL station was transmitting KTZZ(FM)’s audio, including its call sign, and that the STL station’s transmissions were originating from KTZZ(FM)’s main studio located at 3313 15th Street, NE, in Black Eagle, Montana. A subsequent search of the Commission’s records, however, revealed that there was no license authorization for an STL station to operate from this location on frequency 946.5 MHz.

3. On September 5, 2012, the Denver agent spoke with KTZZ(FM)’s manager by phone, and informed him that the Station’s audio was heard on an unlicensed STL station operating on frequency 946.5 MHz from the Station’s main studio location. During the call, the manager acknowledged that KTZZ(FM) was operating an STL station on frequency 946.5 MHz. The following day, on September 6, 2012, the manager contacted the agent by phone, acknowledged that they had no license for the STL station, and advised that operation of the STL station discontinued that morning. On September 17, 2012, a Denver agent performed a follow-up inspection and confirmed that the operation of the STL station had ceased.

4. On December 3, 2012, the Denver Office issued a Notice of Violation (NOV) to Ms. Mason for the unlicensed operation.² In the NOV Response,³ Ms. Mason did not deny the violation; she

¹ 47 U.S.C. § 301.

² See Jeannine M. Mason, Notice of Violation, V201332800024 (Dec. 3, 2012) (NOV).

³ See Response to Notice of Violation of Jeannine M. Mason (Jan. 4, 2013) (on file in EB-FIELDWR-12-00004903) (NOV Response).

explained that Station KTZZ(FM) had operated “an STL transmitter on 946.5 MHz to carry program audio from the studio to the transmitter[,]” that “[i]t was placed in service in the summer of 2011” and was “immediately turn[ed] off” upon notification, pending “appropriate licensing.”⁴

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.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. Operation of an Unlicensed Studio-Transmitter Link

6. The evidence in this case establishes that Ms. Mason, licensee of Station KTZZ(FM), violated Section 301 of the Act. Section 301 of the Act requires that “[n]o person shall use or operate any apparatus for the transmission of energy or communications or signals by radio . . . except under and in accordance with this Act and with a license in that behalf granted under the provisions of this Act.”¹¹ As the record shows, the Denver Office agent found on August 10, 2012, that KTZZ(FM) was operating the

⁴ *Id.* at 2. Ms. Mason stated that the STL station was immediately turned off in September 2012 when she was advised that it was unlicensed, and that an application was started for frequency coordination and appropriate licensing of the STL station. *Id.* Station KTZZ switched to utilization of a phone line for transmission of the audio from the studio to the transmitter. Ms. Mason also provided a photograph of the STL transmitter’s FCC certification, which indicated that the STL station was also capable of transmitting on frequency 950.375 MHz. *See id.* at Exhibit B. We note that, as of the date of this NAL, a review of the FCC’s Universal Licensing System database shows no licenses or applications for an STL station to operate on either 946.5 or 950.375 MHz in the state of Montana.

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., 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 STL station on frequency 946.5 MHz, and that a few weeks later, on September 6, 2012, KTZZ(FM)'s manager acknowledged to the agent that they had no license for the STL station. Furthermore, Ms. Mason, in her NOV Response, acknowledged the unlicensed operation of the STL station since 2011. Therefore, we find that Ms. Mason apparently willfully and repeatedly violated Section 301 of the Act by operating an STL station without a license.

B. Proposed Forfeiture

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 \$10,000.¹² 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 Applying the *Forfeiture Policy Statement*, Section 1.80 of the Rules, and the statutory factors to the instant case, we conclude that Jeannine M. Mason is apparently liable for a total forfeiture in the amount of \$10,000.

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, Jeannine M. Mason is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of ten thousand dollars (\$10,000) for violation of Section 301 of the Act.¹⁴

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, Jeannine M. Mason **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 check or similar instrument, wire transfer, or credit card, and must include the NAL/Account number and FRN referenced above. Jeannine M. Mason shall also send electronic notification on the date said payment is made to WR-Response@fcc.gov. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted.¹⁵ 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). Below are additional instructions you should follow based on the form of payment you select:

- Payment by check or money order must be made payable to the order of the Federal Communications Commission. Such payments (along with the completed Form 159) must be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.

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

¹⁵ An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. To complete the wire transfer and ensure appropriate crediting of the wired funds, a completed Form 159 must be faxed to U.S. Bank at (314) 418-4232 on the same business day the wire transfer is initiated.
- Payment by credit card must be made by providing the required credit card information on FCC Form 159 and signing and dating the Form 159 to authorize the credit card payment. The completed Form 159 must then be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.

11. Any request for making full payment over time under an installment plan should be sent to: Chief Financial Officer—Financial Operations, Federal Communications Commission, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554.¹⁶ If you have questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone, 1-877-480-3201, or by e-mail, ARINQUIRIES@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.¹⁷ Mail the written statement to Federal Communications Commission, Enforcement Bureau, Western Region, Denver Office, 215 S. Wadsworth Blvd., Suite 303, Lakewood, Colorado, 80226, and include the NAL/Acct. No. referenced in the caption. Jeannine M. Mason also shall e-mail the written response to WR-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 principles (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 Jeannine M. Mason, at her address of record, and to her counsel, Steven T. Potts, PLLC, 625 Central Avenue West, Suite 200, Great Falls, MT 59404-2874.

FEDERAL COMMUNICATIONS COMMISSION

Nikki P. Shears
District Director
Denver Office
Western Region
Enforcement Bureau

¹⁶ See 47 C.F.R. § 1.1914.

¹⁷ 47 C.F.R. §§ 1.16, 1.80(f)(3).