

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

In the Matter of	)	
	)	
Glen Rubash	)	File Number: EB-FIELDSCR-12-00004676
	)	NAL/Acct. No.: 201332560002
Licensee of Amateur Radio Station KC0GPV	)	FRN: 0002373934
Manhattan, Kansas	)	

**FORFEITURE ORDER**

**Adopted: November 21, 2013**

**Released: November 21, 2013**

By the Regional Director, South Central Region, Enforcement Bureau:

**I. INTRODUCTION**

1. In this Forfeiture Order (Order), we issue a monetary forfeiture in the amount of four thousand dollars (\$4,000) to Glen Rubash for willfully and repeatedly violating Section 301 of the Communications Act of 1934, as amended (Act).<sup>1</sup> The noted violations involved Mr. Rubash's operation of an unlicensed radio transmitter on the frequency 88.3 MHz in Manhattan, Kansas.

**II. BACKGROUND**

2. On December 5, 2012, the Enforcement Bureau's Kansas City Office (Kansas City Office) issued a Notice of Apparent Liability for Forfeiture (*NAL*) to Mr. Rubash for operating an unlicensed radio transmitter in Manhattan, Kansas.<sup>2</sup> As reflected in the *NAL*, on September 26 and 27, 2012, agents from the Kansas City Office determined that an unlicensed radio station was operating on the frequency 88.3 MHz from a detached garage in Manhattan, Kansas.<sup>3</sup> The agents determined that Mr. Rubash secured space to the garage specifically to house and operate the unlicensed radio station.<sup>4</sup> On September 27, 2012, Mr. Rubash admitted over the telephone that he installed and owned the station's radio transmitting equipment and demonstrated control over the station by stating that he would refuse to surrender the equipment to the agents from the Kansas City Office if required to do so.<sup>5</sup>

3. In response to the *NAL*, Mr. Rubash requests cancellation or reduction of the proposed forfeiture.<sup>6</sup> While he admits making the admissions via telephone on September 27, 2012, he asserts that his statements were based on incorrect information. He states he owned and installed a low power FM radio transmitter, which operated within Part 15 unlicensed limits<sup>7</sup> and was only able to reach 300 feet beyond the

<sup>1</sup> 47 U.S.C. § 301.

<sup>2</sup> *Glen Rubash*, Notice of Apparent Liability for Forfeiture, 27 FCC Rcd 15044 (Enf. Bur. 2012) (*NAL*). A comprehensive recitation of the facts and history of this case can be found in the *NAL* and is incorporated herein by reference.

<sup>3</sup> *Id.* at 15044, paras. 2–3.

<sup>4</sup> *Id.* at 15046, para. 6.

<sup>5</sup> *Id.* at 15044, para. 3.

<sup>6</sup> Letter from Glen Rubash to Kansas City Office, South Central Region, Enforcement Bureau at 1-2 (received Dec. 20, 2012) (*NAL Response*).

<sup>7</sup> *See, e.g.*, 47 C.F.R. § 15.209.

garage housing the station, to teach a small group of college and high school students how to operate a community radio station.<sup>8</sup> He states he attached his transmitter to a home-built antenna supplied by one of the students.<sup>9</sup> He claims no knowledge of the radio transmitter that was in place when the agents inspected the station on September 27, 2012, because he was absent from the station from late July until September 29, 2012, due to illness.<sup>10</sup> He asserts that someone must have replaced the transmitter while he was recuperating from his illness.<sup>11</sup> Accordingly, he asserts he should not be held responsible for unlawful actions which occurred during his absence.<sup>12</sup> Finally, in the alternative, Mr. Rubash asserts that he is unable to pay the forfeiture and requests a reduction.<sup>13</sup>

### III. DISCUSSION

4. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Act,<sup>14</sup> Section 1.80 of the Commission's rules (Rules),<sup>15</sup> and the *Forfeiture Policy Statement*.<sup>16</sup> In examining Mr. Rubash's *NAL Response*, Section 503(b)(2)(E) of the Act requires that the Commission take into account the nature, circumstances, extent, and gravity of the violation 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.<sup>17</sup>

5. We affirm the *NAL*'s finding that Mr. Rubash violated Section 301 of the Act.<sup>18</sup> 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.<sup>19</sup> It is undisputed that Mr. Rubash secured the garage space for use by the radio station, and owned and operated a radio transmitter on the frequency 88.3 MHz without a license. Mr. Rubash contends, however, that his transmitter was not the transmitter found in use by agents on September 27, 2012. Assuming he owned and operated the low power FM transmitter as alleged,<sup>20</sup> we would still conclude he violated Section 301 of the Act. Based on the pictures provided by

<sup>8</sup> Mr. Rubash provided photographs of his low power FM radio transmitter. See *NAL Response* at 4-5.

<sup>9</sup> *Id.*

<sup>10</sup> Mr. Rubash states that when he went to the station on September 29, 2012, several pieces of equipment had been removed from the station and there was no transmitter present other than his disconnected low power transmitter. *Id.* at 2-3. Mr. Rubash, however, provided no corroborating documentation for his statement, such as a police report detailing the property loss.

<sup>11</sup> *Id.* at 2.

<sup>12</sup> Mr. Rubash also states that he was under the influence of pain medication during his telephone conversation on September 27, 2012. See *NAL Response* at 2. As discussed in paragraph 5 *infra*, Mr. Rubash's written statements in the *NAL Response*, made while he was not under the influence of medication, also demonstrate that he violated Section 301. Therefore, although Mr. Rubash appeared to sound lucid to agents on September 27, 2012, his written statements in the *NAL Response* are sufficient to affirm the *NAL*'s finding that Mr. Rubash violated Section 301 of the Act.

<sup>13</sup> *Id.* at 3.

<sup>14</sup> 47 U.S.C. § 503(b).

<sup>15</sup> 47 C.F.R. § 1.80.

<sup>16</sup> *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), *recons. denied*, 15 FCC Rcd 303 (1999) (*Forfeiture Policy Statement*).

<sup>17</sup> 47 U.S.C. § 503(b)(2)(E).

<sup>18</sup> See *NAL supra* note 2.

<sup>19</sup> 47 U.S.C. § 301.

<sup>20</sup> We remain skeptical of Mr. Rubash's story, as he made no mention of students of any kind during the interview on September 27, 2012.

Mr. Rubash and information gathered by agents from the Kansas City Office, it appears his low power FM transmitter was not FCC certified. Moreover, the home-built antenna in use at the station was not authorized to be used with his transmitter. All intentional radiators operating pursuant to Part 15 of the Rules must be certified for use as a Part 15 device.<sup>21</sup> Intentional radiators may only be operated with the antenna with which they are authorized.<sup>22</sup> Operating a Part 15 device in a manner that is inconsistent with the Part 15 Rules requires a license pursuant to Section 301 of the Act.<sup>23</sup> Accordingly, operation of the non-certified low power FM transmitter with an unauthorized antenna described by Mr. Rubash was inconsistent with Part 15 and required a license under Section 301 of the Act. A review of the Commission's records confirms that no license or authorization was issued to anyone to operate a radio station on 88.3 MHz from this location. Moreover, the fact that Mr. Rubash may have been absent from the station for a period of time does not mean that he did not operate or exercise control over the station, as multiple individuals may operate the same station.<sup>24</sup> We have previously held that, because Section 301 of the Act provides that "no person shall use or operate"<sup>25</sup> radio transmission equipment, liability for unlicensed operation may be assigned to any individual taking part in the operation of the unlicensed station, regardless of who else may be responsible for the operation.<sup>26</sup> Therefore, based on the evidence before us, we conclude that Mr. Rubash willfully and repeatedly violated Section 301 of the Act by operating radio transmission equipment without the required Commission authorization.

6. In the *NAL Response*, Mr. Rubash also states that he is unable to pay the \$15,000 forfeiture. With regard to an individual or entity's inability to pay claim, the Commission has determined that gross revenues are generally the best indicator of an ability to pay a forfeiture.<sup>27</sup> Based on the financial documents provided by Mr. Rubash, we find sufficient basis to reduce the forfeiture to \$4,000.<sup>28</sup> However, we caution Mr. Rubash that a party's inability to pay is only one factor in our forfeiture calculation analysis, and is not dispositive.<sup>29</sup> We have previously rejected inability to pay claims in cases of repeated or otherwise egregious violations.<sup>30</sup> Therefore, future violations of this kind may result in significantly higher forfeitures that may not be reduced due to Mr. Rubash's financial circumstances.

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<sup>21</sup> See 47 C.F.R. § 15.201(b).

<sup>22</sup> See 47 C.F.R. § 15.204(c).

<sup>23</sup> See 47 C.F.R. § 15.1(b).

<sup>24</sup> See *Durrant Clarke*, Notice of Apparent Liability for Forfeiture, 26 FCC Rcd 6982 (Enf. Bur. 2011) (finding the fact that someone else may have been involved in the operation of unlicensed station does not lessen culpability).

<sup>25</sup> 47 U.S.C. § 301.

<sup>26</sup> See, e.g., *Durrant Clarke*, 26 FCC Rcd at 6984, para. 7; *Loyd Morris*, Notice of Apparent Liability for Forfeiture, 25 FCC Rcd 13736, 137638–39, para. 8 (Enf. Bur. 2010); *Robert Brown*, Notice of Apparent Liability for Forfeiture, 25 FCC Rcd 13740, 13741–42, para. 8 (Enf. Bur. 2010); *Jean L. Senatus*, Forfeiture Order, 20 FCC Rcd 14418, 14420, para. 11 (Enf. Bur. 2005).

<sup>27</sup> See *Hoosier Broadcasting Corp.*, Memorandum Opinion and Order, 15 FCC Rcd 8640 (2000) (forfeiture not deemed excessive where it represented approximately 7.6 percent of the violator's gross revenues); *Local Long Distance, Inc.*, Order of Forfeiture, 15 FCC Rcd 24385 (2000) (forfeiture not deemed excessive where it represented approximately 7.9 percent of the violator's gross revenues).

<sup>28</sup> This forfeiture amount falls within the percentage range that the Commission has previously found acceptable. See *supra* note 27.

<sup>29</sup> See 47 U.S.C. § 503(b)(2)(E) (requiring Commission to take into account the nature, circumstances, extent, and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require).

<sup>30</sup> *Kevin W. Bondy*, Forfeiture Order, 26 FCC Rcd 7840 (Enf. Bur. 2011) (holding that violator's repeated acts of malicious and intentional interference outweighed evidence concerning his ability to pay), *aff'd*, Memorandum Opinion and Order, 28 FCC Rcd 1170 (Enf. Bur. 2013); *Hodson Broadcasting Corp.*, Forfeiture Order, 24 FCC Rcd 13699 (Enf. Bur. 2009) (holding that permittee's continued operation at variance with its construction permit constituted an intentional and continuous violation, which outweighed permittee's evidence concerning its ability to pay the proposed forfeitures).

#### 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(f)(4) of the Commission's rules, Glen Rubash **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of four thousand dollars (\$4,000) for violations of Section 301 of the Act.<sup>31</sup>

8. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within thirty (30) calendar days after the release date of this Order.<sup>32</sup> If the forfeiture is not paid within the period specified, the case may be referred to the U.S. Department of Justice for enforcement of the forfeiture pursuant to Section 504(a) of the Act.<sup>33</sup> Glen Rubash shall send electronic notification of payment to [SCR-Response@fcc.gov](mailto:SCR-Response@fcc.gov) on the date said payment is made. The payment must be made by check or similar instrument, wire transfer, or credit card, and must include the NAL/Account Number and FRN referenced above. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted.<sup>34</sup> 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.
- 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.

9. Any request for 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.<sup>35</sup> 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](mailto:ARINQUIRIES@fcc.gov).

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<sup>31</sup> 47 U.S.C. §§ 301, 503(b); 47 C.F.R. §§ 0.111, 0.204, 0.311, 0.314, 1.80(f)(4).

<sup>32</sup> 47 C.F.R. § 1.80.

<sup>33</sup> 47 U.S.C. § 504(a).

<sup>34</sup> An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

<sup>35</sup> See 47 C.F.R. § 1.1914.

10. **IT IS FURTHER ORDERED** that a copy of this Order shall be sent by both First Class and Certified Mail, Return Receipt Requested, to Glen Rubash at his address of record.

FEDERAL COMMUNICATIONS COMMISSION

Dennis P. Carlton  
Regional Director, South Central Region  
Enforcement Bureau