

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

In the Matter of)	
)	
Bernard Veargis)	File No.: EB-FIELDSCR-12-00002077
)	NAL/Acct. No.: 201332600003
Miami, Florida)	FRN: 0022469464
)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: February 25, 2013

Released: February 25, 2013

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 Bernard Veargis 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 91.7 MHz in Miami, Florida. We conclude that Mr. Veargis is apparently liable for a forfeiture in the amount of fifteen thousand dollars (\$15,000).

II. BACKGROUND

2. On March 14, 2012, as part of routine monitoring, 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 91.7 MHz to an FM transmitting antenna mounted on a commercial building in Miami, Florida. The agents determined that the signals on 91.7 MHz exceeded the limits for operation under Part 15 of the Commission's rules (Rules)² and, therefore, required a license. The Commission's records showed that no authorization was issued to anyone for operation of an FM broadcast station at or near this address. In addition, on May 1, 2012, in response to a complaint from the Federal Aviation Administration (FAA) of interference to aircraft using the Miami International Airport (MIA) departure frequency 119.45 MHz,³ agents from the Miami Office used direction-finding techniques to locate the source of radio frequency transmissions on the frequency 119.45 MHz. The agents determined that the source of the interference to FAA operations was the FM transmitting antenna used by the same aforementioned unlicensed FM broadcast station operating from a commercial building in Miami.

3. Given the public safety concern associated with interference to FAA operations, the agents proceeded (on May 1, 2012) to inspect the unlicensed station located in the commercial building. The agents, who were accompanied by the building's property owner, observed an FM transmitter connected via coaxial cable to an FM transmitting antenna and laptop located inside the commercial building. The

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.

³ The frequency 119.45 MHz lies within the 108-121.94 MHz band and is listed as a restricted band in Section 15.205(a) of the Commission's rules. 47 C.F.R. § 15.205(a).

laptop's screen showed that it was connected to an Internet Protocol (IP) address "205.234.238.42:5450." The agents interviewed the property owner, who stated that "Bernard" installed the transmitting equipment. The owner also showed the agents a business card he received from "Bernard," but the card reflected the name "Chico" with a handwritten telephone number. The owner called the number, and then handed the telephone to one of the agents. In speaking to the agent, Mr. Veargis a/k/a "Chico" did not admit to being the operator of the station, but stated that he ran the Internet side of the radio station. During the call, Mr. Veargis gave the property owner permission to "destroy" the FM transmitter. The property owner turned off the FM transmitter, and the transmissions on the frequency 119.45 MHz terminated. The FAA reported that the interference to the MIA departure frequency ceased after the transmitter was turned off.

4. An agent from the Miami Office found additional information on the Internet connecting Mr. Veargis to the unlicensed station. A webpage with an IP address of "205.234.238.42:5450"—the same IP address observed on the laptop that was discovered on the date of the inspection—displayed "Chico the Leo Grown Folks Radio Miami" and "www.chicotheleogrownfolksradio.com."⁴ The Florida Department of State's Division of Corporations (Division of Corporations) has public records that list Mr. Veargis as the owner of several businesses including, but not limited to, "Chico's Corner Inc.," "Chico's Good 'N Plenty, Inc.," "Chico's Pay Station Inc.," "Grown Folks Night Out, LLC," "The Grown Folks Night Out, LLC," "Grown Folks Unlimited, LLC," and "Kids Night Out, LLC." The telephone number that Mr. Veargis listed on the various documents he filed with the Division of Corporations for "Chico's Pay Station Inc.," "Grown Folks Night Out, LLC," "Grown Folks Unlimited, LLC," and "The Grown Folks Night Out, LLC" was the same number that the property owner used to call Mr. Veargis a/k/a "Chico" on May 1, 2012.⁵ The agent also found additional information advertising 91.7 FM and referencing the same telephone number for Mr. Veargis on Facebook pages for "Chico Leo Grownfolks" and "Chico The Leo Grown Folks Radio."⁶ On May 9, 2012, agents from the Miami Office observed a van, parked in front of Mr. Veargis' residence in Miami, advertising "Chico the Leo" and "Grown Folks" and, again, listing the same telephone number for Mr. Veargis.

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.⁷ 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.⁸ 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,⁹ and the Commission has so interpreted the term in the Section 503(b)

⁴ See <http://205.234.238.42:5450/> (cached on Google on May 11, 2012) (last visited May 23, 2012).

⁵ Florida Department of State, Division of Corporations Homepage, www.sunbiz.org (last visited May 22, 2012).

⁶ On May 2, 2012, an agent from the Miami Office searched Facebook and found information on pages for "Chico Leo Grownfolks" and "Chico The Leo Grown Folks Radio." A post made on April 28, 2012, on the page for "Chico Leo Grownfolks" stated: "TUNE IN TO 91.7 I'M LIVE.....LISTEN." A website, www.chicotheleogrownfolksradio.com, was also listed on the page for "Chico Leo Grownfolks." A photograph of an advertisement on both Facebook pages also stated: "RESERVATIONS CALL [XXX-XXX-XXXX] OR GO TO WWW.CHICOTHELEOGROWNFOLKSRADIO.COM." (phone number omitted). A post made on April 28 on the page for "Chico The Leo Grown Folks Radio" also stated: "About to go live in a few. Miami lock it in on 91.7....."

⁷ 47 U.S.C. § 503(b).

⁸ 47 U.S.C. § 312(f)(1).

⁹ H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982) ("This provision [inserted in Section 312] defines the terms

context.¹⁰ The Commission may also assess a forfeiture for violations that are merely repeated, and not willful.¹¹ The term “repeated” means the commission or omission of such act more than once or for more than one day.¹²

A. Unlicensed Broadcast Operations

6. The evidence in this case is sufficient to establish that Mr. Veargis violated Section 301 of the Act. 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.¹³ On March 14 and May 1, 2012, agents from the Miami Office determined that an unlicensed radio station on the frequency 91.7 MHz was operating from a commercial building in Miami, Florida. Based on the evidence adduced, we are convinced that it was Mr. Veargis who was operating the unlicensed station. A review of the Commission’s records revealed that no license or authorization was issued to Mr. Veargis or to anyone else to operate a radio station on 91.7 MHz at this location. On May 1, 2012, the owner of the property where the station was located stated that it was “Bernard” (i.e., Bernard Veargis) who installed the radio transmitting equipment. The property owner then placed the agent in contact with someone named “Chico” during the inspection of the station. “Chico,” who we have since determined was Mr. Veargis, acknowledged his connection to the station and demonstrated ownership and control over the FM transmitter by authorizing the property owner (during the call) to destroy the transmitter on his behalf.¹⁴ The transmitter, once disabled by the property owner, caused the interference to FAA operations to immediately cease, thereby confirming the source of the interference.

‘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”)

¹⁰ 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).

¹¹ 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).

¹² 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.

¹³ 47 U.S.C. § 301.

¹⁴ Even if Mr. Veargis denies broadcasting over the air and operating the unlicensed station, the record supports finding that he otherwise had control over the general conduct or management of the station for purposes of finding a Section 301 violation. See 47 U.S.C. § 301. In this regard, the word “operate” in Section 301 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.” 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). *Accord Damian Anthony Ojouku Allen*, Notice of Apparent Liability for Forfeiture, 27 FCC Rcd 7956 (Enf. Bur. 2012) (concluding that Mr. Allen operated an unlicensed station because he exercised control over the general conduct or management of the station), *aff’d*, Forfeiture Order, 27 FCC Rcd 14001 (Enf. Bur. 2012).

7. There is also ample information in state public records and on the Internet connecting Mr. Veargis to the unlicensed station. The contact telephone number that Mr. Veargis listed on several documents filed with the Division of Corporations for the several businesses he owns (e.g., “Chico’s Corner Inc.,” “Chico’s Pay Station Inc.,” “Grown Folks Night Out, LLC,” etc.) is the same number that the property owner used to contact the owner (a.k.a. “Chico”) of the radio transmitting equipment on May 1, 2012.¹⁵ Further, the webpage showing the IP address observed on the laptop connected to the transmitter (on the date of the inspection) displayed the website, www.chicotheleogrownfolksradio.com. On this point, agents from the Miami Office later found many references on this and other websites to a radio station operating on 91.7 MHz under variations of the names “Chico” and “Grown Folks” and using Mr. Veargis’ telephone number. Agents from the Miami office also observed a van advertising “Chico the Leo,” “Grown Folks,” and the telephone number for “Chico” parked in front of Mr. Veargis’ home. Based on the totality of the evidence, we find that Mr. Veargis is the Disc Jockey “Chico Leo Grownfolks” referenced on the aforementioned websites; that Mr. Veargis is the person with whom the agents spoke on May 1, 2012 and who permitted the property owner to “destroy” the FM transmitter; and that it was Mr. Veargis who operated the unlicensed station. Because Mr. Veargis consciously operated the station, and did so on more than one day, the apparent violations of the Act were both willful and repeated. We therefore conclude, based on the evidence before us, that Mr. Veargis 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 Commission’s Rules, the base forfeiture amount for operation without an instrument of authorization is \$10,000.¹⁶ 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.¹⁷ In doing so, we find that the violations here warrant a proposed forfeiture above the base amount. As the record reflects, Mr. Veargis’ unlicensed operations on 91.7 MHz produced a spurious signal on the frequency 119.45 MHz, which caused harmful interference to aircraft departing from Miami International Airport. Given the safety hazard to the operation of aircraft at the Miami International Airport, we find that an upward adjustment of \$5,000 in the forfeiture is warranted.¹⁸ Applying the *Forfeiture Policy Statement*, Section 1.80 of the Rules, and the statutory factors to the instant case, we conclude that Mr. Veargis 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,

¹⁵ See *supra* note 5. See also Transmittal Letters for “Grown Folks Night Out, LLC” and “The Grown Folks Night Out, LLC” filed with the Florida Department of State’s Division of Corporations, August 15, 2005; Transmittal Letter for “Grown Folks Unlimited, LLC” filed with the Florida Department of State’s Division of Corporations, September 5, 2005; and Articles of Incorporation for Chico’s Pay Station Inc. filed with the Florida Department of State’s Division of Corporations, August 6, 2010.

¹⁶ *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.

¹⁷ 47 U.S.C. § 503(b)(2)(E).

¹⁸ See, e.g., *Robens Cheriza*, Forfeiture Order, 27 FCC Rcd 3198 (Enf. Bur. 2012), *aff’g*, Notice of Apparent Liability for Forfeiture, 27 FCC Rcd 493 (Enf. Bur. 2012) (upwardly adjusting proposed forfeiture because of interference caused to FAA operations).

Bernard Veargis 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.¹⁹

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, Bernard Veargis **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

11. 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. Bernard Veargis will also send electronic notification on the date said payment is made to SCR-Response@fcc.gov. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted.²⁰ 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.

12. Any request for full payment 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. 20554.²¹ 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.

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 to Sections 1.16 and 1.80(f)(3) of the Rules.²² 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. Bernard Veargis also shall e-mail the written response to SCR-Response@fcc.gov.

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

²⁰ An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

²¹ See 47 C.F.R. § 1.1914.

²² 47 C.F.R. §§ 1.16, 1.80(f)(3).

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 First Class Mail to Bernard Veargis at his address of record.

FEDERAL COMMUNICATIONS COMMISSION

Stephanie Dabkowski
Resident Agent
Miami Office
South Central Region
Enforcement Bureau