

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

|                  |   |                                   |
|------------------|---|-----------------------------------|
| In the Matter of | ) |                                   |
|                  | ) |                                   |
| Michael Gregory  | ) | File No.: EB-FIELDSCR-12-00001175 |
|                  | ) | NAL/Acct. No.: 201232600014       |
| Miami, Florida   | ) | FRN: 0021896253                   |
|                  | ) |                                   |

**FORFEITURE ORDER**

**Adopted:** March 8, 2013

**Released:** March 8, 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 seven hundred fifty dollars (\$750) to Michael Gregory for willfully and repeatedly violating Section 301 of the Communications Act of 1934, as amended (Act).<sup>1</sup> The noted violations involved Mr. Gregory's operation of an unlicensed radio station on the frequency 92.7 MHz in Miami, Florida.

**II. BACKGROUND**

2. On July 11, 2012, the Enforcement Bureau's Miami Office (Miami Office) issued a Notice of Apparent Liability for Forfeiture (NAL) for ten thousand dollars (\$10,000) to Mr. Gregory for operating an unlicensed radio station in Miami.<sup>2</sup> In response to the NAL, Mr. Gregory does not deny the violations, but requests cancellation or reduction of the forfeiture based on inability to pay.<sup>3</sup>

**III. DISCUSSION**

3. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Act,<sup>4</sup> Section 1.80 of the Commission's rules (Rules),<sup>5</sup> and the *Forfeiture Policy Statement*.<sup>6</sup> In examining Mr. Gregory's 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>7</sup>

---

<sup>1</sup> 47 U.S.C. § 301.

<sup>2</sup> *Michael Gregory*, Notice of Apparent Liability for Forfeiture, 27 FCC Rcd 7600 (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> See Letter from Michael Gregory to Miami Office, South Central Region, Enforcement Bureau (Aug. 8, 2012) (on file in EB-FIELDSCR-12-00001175) (NAL Response).

<sup>4</sup> 47 U.S.C. § 503(b).

<sup>5</sup> 47 C.F.R. § 1.80.

<sup>6</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>7</sup> 47 U.S.C. § 503(b)(2)(E).

4. We affirm the *NAL*'s finding that Mr. Gregory violated Section 301 of the Act.<sup>8</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>9</sup> As reflected in the *NAL*, on March 7 and April 27, 2012, agents from the Miami Office observed an unlicensed radio station on the frequency 92.7 MHz operating from a commercial building in Miami, Florida. On April 27, 2012, Mr. Gregory admitted that he operated the unlicensed radio station from his rented commercial suite. In addition, a review of the Commission's records confirms that Mr. Gregory did not have a license to operate a radio station on this frequency, at this location. Based on the undisputed evidence, we conclude that Mr. Gregory willfully and repeatedly violated Section 301 of the Act by operating radio transmission equipment without the required Commission authorization.

5. In response to the *NAL*, Mr. Gregory nonetheless requests cancellation or reduction of the \$10,000 forfeiture, asserting that his financial circumstances make it difficult for him to pay the forfeiture. With regard to an individual's or entity's inability to pay claim, the Commission has determined that, in general, gross income or revenues are the best indicator of an ability to pay a forfeiture.<sup>10</sup> Based on the financial documents provided by Mr. Gregory, we find sufficient basis to reduce the forfeiture to \$750.<sup>11</sup> However, we caution Mr. Gregory that a party's inability to pay is only one factor in our forfeiture calculation analysis, and is not dispositive.<sup>12</sup> We have previously rejected inability to pay claims in cases of repeated or otherwise egregious violations.<sup>13</sup> Therefore, future violations of this kind may result in significantly higher forfeitures that may not be reduced due to Mr. Gregory's financial circumstances.

#### IV. ORDERING CLAUSES

6. 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, Michael Gregory **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of seven hundred fifty dollars (\$750) for violations of Section 301 of the Act.<sup>14</sup>

---

<sup>8</sup> See *NAL*, *supra* note 2.

<sup>9</sup> 47 U.S.C. § 301.

<sup>10</sup> See *PJB Communications of Virginia, Inc.*, Forfeiture Order, 7 FCC Rcd 2088, 2089 (1992) (forfeiture not deemed excessive where it represented approximately 2.02 percent of the violator's gross revenues); *Local Long Distance, Inc.*, Forfeiture Order, 16 FCC Rcd 24385 (2000) (forfeiture not deemed excessive where it represented approximately 7.9 percent of the violator's gross revenues); *Hoosier Broadcasting Corporation*, Forfeiture Order, 15 FCC Rcd 8640 (2002) (forfeiture not deemed excessive where it represented approximately 7.6 percent of the violator's gross revenues).

<sup>11</sup> This forfeiture amount falls within the percentage range that the Commission has previously found acceptable. See *supra* note 10. If Mr. Gregory finds it financially infeasible to make full payment of this amount within 30 days, he can request an installment plan, as described in paragraph 8, *infra*, of this Forfeiture Order.

<sup>12</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>13</sup> See, e.g., *Whisler Fleuriner*, File No. EB-11-MA-0123, Forfeiture Order, DA 13-175, 2013 WL 485239 (Enf. Bur. Feb. 8, 2013) (rejecting inability to pay claim because violator's demonstrated inability to pay was outweighed by the gravity of repeated operation of an unlicensed radio station). *Accord Kevin W. Bondy*, Forfeiture Order, 26 FCC Rcd 7840 (Enf. Bur. 2011) (holding that violator's repeated acts of malicious and intentional interference outweigh evidence concerning his ability to pay), *aff'd*, Memorandum Opinion and Order, DA 13-199 (Enf. Bur. Feb. 15, 2013); *Hodson Broadcasting Corp.*, Forfeiture Order, 24 FCC Rcd 13699 (Enf. Bur. 2009) (holding that permittee's continued unauthorized operation outweighed its inability to pay claim).

<sup>14</sup> 47 U.S.C. §§ 301, 503(b); 47 C.F.R. §§ 0.111, 0.204, 0.311, 0.314, 1.80(f)(4).

7. 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 Forfeiture Order.<sup>15</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>16</sup> Michael Gregory 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>17</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.

8. 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.<sup>18</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).

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

FEDERAL COMMUNICATIONS COMMISSION

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

---

<sup>15</sup> 47 C.F.R. § 1.80.

<sup>16</sup> 47 U.S.C. § 504(a).

<sup>17</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>18</sup> See 47 C.F.R. § 1.1914.