

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

In the Matter of)	
)	
Jean Richard Salvador)	File No.: EB-FIELDSCR-13-00009676
)	NAL/Acct. No.: 201432600002
Miami, Florida)	FRN: 0023464704

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: March 26, 2014

Released: March 26, 2014

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 Jean Richard Salvador 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 89.5 MHz in Miami, Florida. We conclude that Mr. Salvador is apparently liable for a forfeiture in the amount of fifteen thousand dollars (\$15,000).

II. BACKGROUND

2. On June 28, 2013, in response to a complaint, 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 89.5 MHz to a transmitting antenna mounted in a tree on the property of a multi-family residence in Miami, Florida. The agents took field strength measurements of the station's signal and determined that the transmissions on 89.5 MHz exceeded the limits for operation under Part 15 of the Commission's rules (Rules),² and therefore required a license. The agents consulted the Commission's records and confirmed that no authorization had been issued to Mr. Salvador, or to anyone else, for the operation of an FM broadcast station at or near the multi-family residence in Miami, Florida.

3. On July 5, 2013, agents from the Miami Office again used direction-finding techniques to locate the source of transmissions on the frequency 89.5 MHz to the transmitting antenna identified on June 28, 2013. The agents then traced the coaxial cable from the transmitting antenna into the rear facing window of Apartment 2 of the multi-family residence. Agents knocked on the door of Apartment 2 at approximately 11:30 am. Approximately 3 minutes later, the agents observed that the radio station on 89.5 MHz ceased operation. A male then answered the door and identified himself as "Richard Salvador," but would not provide any identification. In response to agents' questions regarding the transmissions on 89.5 MHz, Mr. Salvador stated that his friend operated the radio station. After purportedly receiving permission from his friend, Mr. Salvador eventually allowed the agents to inspect the unlicensed station. The agents

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.

observed that the coaxial cable that entered the rear window of Apartment 2 was connected to an unmarked, homemade FM transmitter and other equipment. Mr. Salvador told the agents that he turned the radio transmitter on and off at different times on multiple days on behalf of his friend, but did not provide any additional information regarding his friend or his operation of the station. Mr. Salvador then voluntarily relinquished the transmitter to the agents, allegedly after receiving permission from his friend. The agents did not witness any other persons present at Apartment 2 besides Mr. Salvador.

4. Prior to leaving Apartment 2, the agents issued an on-scene Notice of Unlicensed Operation (NOUO) to Mr. Salvador, which he signed, and which warned that operation of an unlicensed station violated the Act and the Rules and could result in further enforcement action.³ Agents later determined that “Richard Salvador’s” legal name is “Jean Richard Salvador.”⁴ In addition, evidence obtained from the Internet identifies Mr. Salvador as a DJ known as Konpaman for BREEZ FM 89.5 in Miami, Florida. According to the domain registrar, “Richard Salvador” registered the domain name for BREEZ FM’s webpage.

5. On September 17, 2013, in response to another complaint, agents from the Miami Office again used direction-finding techniques to locate the source of radio frequency transmissions on the frequency 89.5 MHz to a transmitting antenna at the same multi-family residence in Miami, Florida. The agents took field strength measurements of the station’s signal and determined that the transmissions on 89.5 MHz once again exceeded the limits for operation under Part 15 of the Rules and required a license. The agents consulted the Commission’s records and re-confirmed that no authorization had been issued to Mr. Salvador, or to anyone else, for the operation of an FM broadcast station at or near the multi-family residential residence in Miami, Florida.

III. DISCUSSION

6. 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)

³ *Richard Salvadore*, On Scene Notice of Unlicensed Operation (July 5, 2013) (on file in EB-FIELDSCR-13-00009676). The agent mistakenly added an “e” to Mr. Salvador’s name when filling out the NOUO.

⁴ On July 5, 2013, “Richard Salvador” identified the vehicle parked in front of Apartment 2 as his. Using the vehicle identification number, an agent consulted Lexis Nexis and determined the vehicle was registered to “Jean Richard Salvador” at Apartment 2 of the multi-family dwelling. Lexis Nexis lists “Richard Salvador” and “Richard Salvadore” as two of many name variations associated with “Jean Richard Salvador.” Lexis Nexis Investigative Portal Homepage, <http://www.lexisnexis.com/government/solutions/investigative/> (last visited Nov. 14, 2013).

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 . . .”).

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. Unlicensed Broadcast Operations

7. We find that the record evidence in this case is sufficient to establish that Mr. Salvador 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.¹¹ On June 28, July 5, and September 17, 2013, agents from the Miami Office determined that an unlicensed radio station on the frequency 89.5 MHz was operating from Mr. Salvador’s residence. A review of the Commission’s records revealed that no license or authorization was issued to Mr. Salvador, or to anyone else, to operate a radio station on 89.5 MHz at this location. Although Mr. Salvador alleged that his friend operated the unlicensed station, publicly available information identifies Mr. Salvador as an organizer and DJ for the unlicensed station marketing itself as BREEZ FM 89.5 in Miami, Florida. The totality of the evidence convinces us that Mr. Salvador is the friend referenced during the July 5, 2013 inspection. However, even if Mr. Salvador is not the friend, he exercised control over the unlicensed station by turning off the transmitter on July 5, 2013 and operating the transmitter on other days. Thus, Mr. Salvador was also an operator of the unlicensed station and equally liable for a forfeiture under Section 301 of the Act.¹² Based on the evidence before us, we find Mr. Salvador apparently willfully and repeatedly violated Section 301 of the Act by operating radio transmission equipment on the frequency 89.5 MHz without the required Commission authorization.

⁸ See, e.g., *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388, para. 5 (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, para. 9.

¹¹ 47 U.S.C. § 301.

¹² See, e.g., *Glen Rubash*, Forfeiture Order, 28 FCC Rcd 15922, 15924, para. 5 (Enf. Bur. 2013) (“[L]iability 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.”); *Durrant Clarke*, Notice of Apparent Liability for Forfeiture, 26 FCC Rcd 6982, 6984, para. 7 (Enf. Bur. 2011) (finding the fact that someone else may have been involved in the operation of unlicensed station does not lessen culpability); *Vicot Chery*, Notice of Apparent Liability for Forfeiture, 25 FCC Rcd 14596, 14598, paras. 6–7 (Enf. Bur. 2010) (finding that someone who leased space housing unlicensed transmitter and turned the transmitter off exercised control over and operated that station); *Jean L. Senatus*, Forfeiture Order, 20 FCC Rcd 14418, 14420, para. 11 (Enf. Bur. 2005) (“The Act does not provide that a forfeiture can be assessed only where we are able to identify all individuals involved in the operation of an unlicensed station.”).

B. Proposed Forfeiture

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 \$10,000.¹³ 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.¹⁴ We find that the violations here warrant a proposed forfeiture above the base amount. On July 5, 2013, Mr. Salvador was issued an on-scene NOUO explaining that unlicensed operation of a radio station violated the Act and could subject him to further enforcement action, including a substantial monetary forfeiture. Despite having acknowledged receipt of the NOUO, Mr. Salvador continued to operate an unlicensed radio station on 89.5 MHz from his residence in Miami, Florida. The fact that Mr. Salvador continued to operate an unlicensed station after being put on notice that his actions contravened the Act, the Rules, and related Commission orders demonstrates a deliberate disregard for the Commission's authority and requirements. Thus, we find that an upward adjustment in the forfeiture amount of \$5,000 is warranted.¹⁵ Applying the *Forfeiture Policy Statement*, Section 1.80 of the Rules, and the statutory factors to the instant case, we conclude that Mr. Salvador is apparently liable for a forfeiture in the amount of fifteen thousand dollars (\$15,000) for operating an unlicensed radio station.

IV. ORDERING CLAUSES

9. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Act, and Sections 0.111, 0.204, 0.311, 0.314, and 1.80 of the Rules, Jean Richard Salvador 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.¹⁶

10. **IT IS FURTHER ORDERED** that, pursuant to Section 1.80 of the Rules, within thirty (30) calendar days of the release date of this Notice of Apparent Liability for Forfeiture, Jean Richard Salvador **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. Mr. Salvador shall 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

¹³ *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.

¹⁴ 47 U.S.C. § 503(b)(2)(E).

¹⁵ See *Robert Brown*, Memorandum Opinion and Order, 27 FCC Rcd 6975 (Enf. Bur. 2012), *aff'g*, Forfeiture Order, 26 FCC Rcd 6854 (Enf. Bur. 2011), *aff'g*, Notice of Apparent Liability for Forfeiture, 25 FCC Rcd 13740 (Enf. Bur. 2010) (upwardly adjusted proposed forfeiture by \$5,000 because violator operated an unlicensed radio station after receiving a written warning that such action violated the Act and Rules); *Loyd Morris*, Memorandum Opinion and Order, 27 FCC Rcd 6979 (Enf. Bur. 2012), *aff'g*, Forfeiture Order, 26 FCC Rcd 6856 (Enf. Bur. 2011), *aff'g*, Notice of Apparent Liability for Forfeiture, 25 FCC Rcd 13736 (Enf. Bur. 2010) (upwardly adjusted proposed forfeiture by \$5,000 because violator operated an unlicensed radio station after receiving a written warning that such action violated the Act and Rules).

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

submitted.¹⁷ 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 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. 20554.¹⁸ 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.¹⁹ 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. Jean Richard Salvador also shall e-mail the written response to SCR-Response@fcc.gov.

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 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.

¹⁷ An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

¹⁸ See 47 C.F.R. § 1.1914.

¹⁹ 47 C.F.R. §§ 1.16, 1.80(f)(3).

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 Jean Richard Salvador at his address of record.

FEDERAL COMMUNICATIONS COMMISSION

Stephanie Dabkowski
Resident Agent
Miami Office
South Central Region
Enforcement Bureau