

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

In the Matter of)	
)	File No.: EB-FIELDNER-13-00009894
Jose Alejandro Aguilar)	NAL/Acct. No.: 201432320001
)	FRN: 0023581226
Louisville, Kentucky)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: April 29, 2014

Released: April 29, 2014

By the District Director, Chicago Office, Northeast Region, Enforcement Bureau:

I. INTRODUCTION

1. We propose a penalty of \$15,000 against Jose Alejandro Aguilar (a.k.a Alejandro Aguliar and Alex Aguilar) for apparently operating a pirate radio station in Louisville, Kentucky. The Commission warned Mr. Aguilar in person that pirate operations are illegal and he admitted that he operated the radio station without a license. The fact that Mr. Aguilar continued to operate the radio station notwithstanding the warning demonstrates a deliberate disregard for the Commission's authority and its rules, warranting a significant penalty.

2. In this Notice of Apparent Liability for Forfeiture (*NAL*), we find that Mr. Aguilar 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 frequencies 99.5 MHz and 87.9 MHz in Louisville, Kentucky.

II. BACKGROUND

3. On July 11, 2013, in response to a complaint, an agent from the Enforcement Bureau's Chicago Office (Chicago Office) used direction-finding techniques to identify the source of radio frequency transmissions on the frequency 99.5 MHz as an FM transmitting antenna located on the rooftop of a two-story brick commercial building at 3415 Bardstown Road in Louisville, Kentucky. On that same day, the agent took field strength measurements of the station's signal and determined that the transmissions on 99.5 MHz exceeded the limits for operation under Part 15 of the Commission's rules (Rules), and therefore required a license.² According to the Commission's records, no authorization has been issued to Mr. Aguilar, or to anyone else, for the operation of an FM broadcast station at or near the Louisville commercial property.

4. Also on July 11, 2013, the agent met with the owner of the commercial building. The building owner reported that the station is owned and operated by the tenants in Suite 407C. Although the building owner was not able to find a copy of the lease, he stated that the lessee is Radio Pasion 316, Inc.

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.

and he recalled that Mr. Aguilar was one of the individuals named on the lease.³ While the agent was meeting with the building owner in his office, Mr. Aguilar appeared and admitted to the agent that he operates the station without a license. The agent handed Mr. Aguilar a Notice of Unlicensed Operation (NOUO), which warned him that operation of the unlicensed radio station on 99.5 MHz violated Section 301 of the Act and outlined the potential penalties for such a violation, including seizure of the equipment, fines, and imprisonment. The NOUO also directed Mr. Aguilar to terminate operation of the unlicensed station immediately and provided him ten days to reply. The agent observed that the station was off the air when he left the scene. Mr. Aguilar did not respond to the NOUO.

5. On July 23, 2013, another agent from the Chicago Office commenced an investigation of an alleged unlicensed station operating on 87.9 MHz in Louisville, Kentucky. The agent used direction-finding techniques to identify the source of the radio frequency transmissions as the same FM transmitting antenna located on the rooftop of the two-story brick commercial building at 3415 Bardstown Road. The agent also took field strength measurements of the station's signal and determined that the transmissions on 87.9 MHz exceeded the limits for operation on this frequency under Part 15 of the Rules, and therefore required a license.⁴ The agent conducted an inspection of the radio station in Suite 407C and interviewed Mr. Aguilar. During the inspection, Mr. Aguilar again admitted to operating the station without a license.

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) context.⁸ The Commission may also assess a forfeiture for violations that are merely repeated, and not

³ The agent later determined that Radio Pasion 316, Inc. was incorporated in Kentucky on September 19, 2011, and dissolved on September 11, 2012. The building owner also recalled that Fernando Guerrero was the second individual on the lease. Because agents never encountered Mr. Guerrero at the station, we have no basis, at this time, to pursue further enforcement action against Mr. Guerrero. We note, however, that Mr. Guerrero was named on the hand-written Notice of Unlicensed Operation issued on July 11, 2013.

⁴ In relevant part, the general limit found in Section 15.209 of the Rules allows emissions in the 30-88 MHz band whose field strength does not exceed 100 μ V/m at three meters, but also prohibits any fundamental emission from unlicensed broadcasters. 47 C.F.R. § 15.209.

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, para. 5 (1991), *recons. denied*, 7 FCC Rcd 3454 (1992).

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. Aguilar 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 July 11 and 23, 2013, agents from the Chicago Office determined that an unlicensed radio station operated on 99.5 MHz and 87.9 MHz, respectively, from Suite 407C of a commercial building located at 3415 Bardstown Road in Louisville, Kentucky. The building owner identified Mr. Aguilar as one of the tenants in Suite 407C and, on July 11 and 23, 2013, Mr. Aguilar admitted to FCC agents that he operated the station without a license. Based on the totality of the evidence before us, we find that Mr. Aguilar apparently willfully and repeatedly violated Section 301 of the Act by operating radio transmission equipment without the required Commission authorization.

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 \$10,000.¹² 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 We find that the violations here warrant an upward adjustment to the base amount because, despite having received a hand-written NOUO and admitting his pirate operations on July 11, 2013, Mr. Aguilar continued to operate an unlicensed radio station from 3415 Bardstown Road in Louisville, Kentucky. The fact that Mr. Aguilar 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.¹⁴ Applying the *Forfeiture Policy Statement*,

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 *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 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 13740 (Enf. Bur. 2010), *aff’g*, Notice of Apparent Liability for Forfeiture, 25 FCC Rcd 13740 (Enf. Bur. 2010) (continued...)

Section 1.80 of the Rules, and the statutory factors to the instant case, we conclude that Mr. Aguilar 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, Jose Alejandro Aguilar 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.¹⁵

10. **IT IS FURTHER ORDERED** that, pursuant to Section 1.80 of the Rules,¹⁶ within thirty (30) calendar days of the release date of this Notice of Apparent Liability for Forfeiture, Jose Alejandro Aguilar **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. Jose Alejandro Aguilar shall also send electronic notification on the date said payment is made to NER-Response@fcc.gov. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be 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.

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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).

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

¹⁶ 47 C.F.R. § 1.80.

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

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, Northeast Region, Chicago District Office, 1550 North Northwest Highway, Room 306, Park Ridge, IL 60068 and include the NAL/Acct. No. referenced in the caption. Jose Alejandro Aguilar also shall e-mail the written response to NER-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.

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 Jose Alejandro Aguilar at his address of record.

FEDERAL COMMUNICATIONS COMMISSION

James M. Roop
District Director
Chicago Office
Northeast Region
Enforcement Bureau

¹⁸ See 47 C.F.R. § 1.1914.

¹⁹ 47 C.F.R. §§ 1.16, 1.80(f)(3).