

**Before the
Federal Communications Commission
Washington, DC 20554**

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| In the Matter of |) | |
| |) | |
| Jose Luis Hernandez |) | File No.: EB-FIELD-NER-15-00018541 |
| Passaic, New Jersey |) | NAL/Acct. No.: 201632380001 |
| |) | FRN: 0025007683 |

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: October 30, 2015**Released: October 30, 2015**

By the District Director, New York Office, Northeast Region, Enforcement Bureau:

I. INTRODUCTION

1. We propose a penalty of \$10,000 against Jose Luis Hernandez for operating an unlicensed radio station on 95.9 MHz in Passaic, New Jersey. The Commission previously warned Mr. Hernandez that operation of this unlicensed station was illegal and that continued operation could result in further enforcement action. Mr. Hernandez's deliberate disregard of the Commission's warning warrants a significant penalty. Commission action in this area is essential because unlicensed radio stations create a danger of interference to licensed communications and undermine the Commission's authority over FM broadcast radio operations.

II. BACKGROUND

2. On February 10, 2015, in response to a complaint, agents from the Enforcement Bureau's New York Office (New York Office) used mobile direction-finding techniques to locate the source of radio frequency transmissions on the frequency 95.9 MHz to an FM antenna mounted on the roof of a single family residence located in Passaic, New Jersey. The agents recorded the station, took field strength measurements of the station's signal and determined that the transmissions on 95.9 MHz exceeded the limits for operation under Part 15 of the Commission's rules (Rules),¹ and therefore required a license. The agents consulted the Commission's records and confirmed that no authorization had been issued to Mr. Hernandez, or to anyone else, for the operation of an FM broadcast station at or near this residence in Passaic, New Jersey.

3. On March 4, 2015, the New York Office sent the property owner, Ramon Suarez (Suarez), a Notice of Unlicensed Operation informing him that an unlicensed radio station was operating on 95.9 MHz at a residence owned by him in Passaic, New Jersey and warned Mr. Suarez that continued unlicensed operations could result in additional enforcement action.² No response to the Notice was received, but upon returning to the property the agents noted that the FM antenna had been removed from the roof of the residence.

4. On July 20, 2015, agents from the New York Office again used mobile direction-finding techniques to identify the source of transmissions on the frequency 95.9 MHz to a new location, 27 Jackson Street, Passaic, New Jersey, a multi-family dwelling. The agents again recorded the station, took field

¹ 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.

² *Ramon Suarez*, Notice of Unlicensed Operation (March 4, 2015) (on file in EB-FIELDNER-15-00018541).

strength measurements of the station's signal, confirmed that the transmissions exceeded the limits for operation under Part 15 of the Commission's rules, and determined that no authorization had been issued to Mr. Hernandez or to anyone else, for the operation of a station at or near this multi-family dwelling.

5. On July 20, 2015, agents from the New York Office spoke to the superintendent of the building, Henry Perez Espinoza, who confirmed that the station operator was Mr. Luis Hernandez, "El Emperador." A subsequent search of the Internet revealed that a radio station calling itself "La Consentida" purports to operate on 95.9 MHz in New Jersey and that "La Consentida FM Radio" belongs to Mr. Jose Luis Hernandez.³ On July 31, 2015, the New York Office issued a Notice of Unlicensed Operation to superintendent of the building, Mr. Henry Perez Espinoza, informing him that an unlicensed radio station was operating on 95.9 MHz at a residence managed by him in Passaic, New Jersey and warned Mr. Espinoza that continued unlicensed operations could result in additional enforcement action.⁴ Mr. Espinoza immediately removed the antenna.

III. DISCUSSION

6. We find that Mr. Hernandez apparently willfully and repeatedly violated Section 301 of the Communications Act of 1934, as amended (Act).⁵ 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 without a license granted by the Commission. On February 10, 2015 and July 20, 2015, agents from the New York Office determined that an unlicensed radio station operated on 95.9 MHz from equipment owned by Mr. Hernandez. The property owners were warned by the Commission that such unlicensed operations violated the Act on March 4, 2015 and July 31, 2015. Nonetheless, Mr. Hernandez continued to operate an unlicensed radio station. As a result, we find Mr. Hernandez apparently willfully and repeatedly violated Section 301 of the Act by operating an unlicensed radio station.

7. 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.⁶ Here, Section 503(b)(2)(D) of the Act authorizes us to assess a forfeiture against Mr. Hernandez of up to \$16,000 for each day of a continuing violation, up to a statutory maximum of \$122,500 for a single act or failure to act.⁷ In exercising our forfeiture authority, we must consider the "nature, circumstances, extent, and gravity of the violation and, with respect to the

³ The website for "La Consentida" (<http://www.laconsentidafmradio.com>) includes a header that states "Luis Hernandez Emperor Productions" and the affirmation that Luis Hernandez is the Manager and CEO of La Consentida. (accessed on Sept. 29, 2015).

⁴ *Henry Perez Espinoza*, Notice of Unlicensed Operation (July 31, 2015) (on file in EB-FIELDNER-15-00018541).

⁵ 47 U.S.C. § 301.

⁶ 47 U.S.C. § 503(b).

⁷ See 47 U.S.C. § 503(b)(2)(D); 47 C.F.R. § 1.80(b)(7). These amounts reflect inflation adjustments to the forfeitures specified in Section 503(b)(2)(D) (\$10,000 per violation or per day of a continuing violation and \$75,000 per any single act or failure to act). The Federal Civil Penalties Inflation Adjustment Act of 1990, Pub. L. No. 101-410, 104 Stat. 890, as amended by the Debt Collection Improvement Act of 1996, Pub. L. No. 104-134, Sec. 31001, 110 Stat. 1321, requires the Commission to adjust its forfeiture penalties periodically for inflation. See 28 U.S.C. § 2461 note (4). The Commission most recently adjusted its penalties to account for inflation in 2013. See *Amendment of Section 1.80(b) of the Commission's Rules, Adjustment of Civil Monetary Penalties to Reflect Inflation*, Order, 28 FCC Rcd 10785 (Enf. Bur. 2013); see also *Inflation Adjustment of Monetary Penalties*, 78 Fed. Reg. 49,370-01 (Aug. 14, 2013) (setting Sept. 13, 2013, as the effective date for the increases).

violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.”⁸ In addition, the Commission has established forfeiture guidelines; they establish base penalties for certain violations and identify criteria that we consider when determining the appropriate penalty in any given case.⁹ Under these guidelines, we may adjust a forfeiture upward for violations that are egregious, intentional, or repeated, or that cause substantial harm or generate substantial economic gain for the violator.¹⁰

8. Section 1.80(b) of the Rules sets a base forfeiture of \$10,000 for operation without an instrument of authorization.¹¹ We have discretion, however, to depart from these guidelines, taking into account the particular facts of each individual case.¹² After applying the *Forfeiture Policy Statement*, Section 1.80 of the Rules, and the statutory factors, we propose a total forfeiture of \$10,000, for which Mr. Hernandez is apparently liable.

IV. ORDERING CLAUSES

9. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Act¹³ and Section 1.80 of the Rules,¹⁴ Jose Luis Hernandez is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of ten thousand dollars (\$10,000) for willful and repeated 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 Luis Hernandez **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture consistent with paragraph 13 below.

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 Luis Hernandez shall send electronic notification of payment to NER-Response@fcc.gov on the date said payment is made. 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 that should be followed based on the form of payment selected:

⁸ 47 U.S.C. § 503(b)(2)(E).

⁹ 47 C.F.R. § 1.80(b)(8), Note to paragraph (b)(8).

¹⁰ *Id.*

¹¹ 47 C.F.R. § 1.80(b).

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, 17098–99, para. 22 (1997) (noting that “[a]lthough we have adopted the base forfeiture amounts as guidelines to provide a measure of predictability to the forfeiture process, we retain our discretion to depart from the guidelines and issue forfeitures on a case-by-case basis, under our general forfeiture authority contained in Section 503 of the Act”) (*Forfeiture Policy Statement*), *recons. denied*, Memorandum Opinion and Order, 15 FCC Rcd 303 (1999).

¹³ 47 U.S.C. § 503(b).

¹⁴ 47 C.F.R. § 1.80.

¹⁵ 47 U.S.C. § 301.

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>.

- 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, SW, Room 1-A625, Washington, DC 20554.¹⁸ Questions regarding payment procedures should be directed to 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 The written statement must be mailed to the Federal Communications Commission, Enforcement Bureau, Northeast Region, New York Office, 201 Varick Street, Suite 1151, New York, NY 10014, and must include the NAL/Account Number referenced in the caption. The statement must also be e-mailed 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 practices; 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.

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 first class mail and certified mail, return receipt requested, to Jose Luis Hernandez at his address of record.

FEDERAL COMMUNICATIONS COMMISSION

Stephen Maguire
District Director
New York Office
Northeast Region
Enforcement Bureau