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

In the Matter of	)	
	)	
Luis Angel Ayora	)	File No.: EB-FIELDNER-13-00010276
	)	NAL/Acct. No.: 201532380001
Queens, New York	)	FRN: 0024507154

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: April 14, 2015 **Released: April 14, 2015**

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

I. INTRODUCTION

1. We propose a penalty of $20,000 against Luis Angel Ayora for apparently operating a pirate FM radio station in Queens, New York. Pirate radio operations may interfere with and pose competitive harm to licensed broadcasters and undermine the Commission's ability to manage the nation's radio spectrum. The Commission repeatedly warned Mr. Ayora that pirate radio operations are illegal, but he nevertheless continued to operate his unlicensed station. The fact that Mr. Ayora continued to operate without authorization notwithstanding the Commission's warnings demonstrates a deliberate disregard for the Commission's authority and its rules, warranting a significant penalty.

II. BACKGROUND

2. Mr. Ayora has a history of operating unlicensed FM radio stations in Queens, New York. In 2013, Mr. Ayora received three Notices of Unlicensed Operation for operating a pirate station on 91.9 MHz from various locations within Queens. On May 29, 2014, in response to complaints of unauthorized operations, agents from the New York Office located the source of radio transmissions on 91.9 MHz to an FM transmitter antenna located at an apartment building at 41-15 Warren Street in Queens. The agents took field strength measurements of the station's signal and determined that it exceeded the limits for operation under Part 15 of the Commission's rules (Rules)[1] and therefore required a license. According to Commission records, no authorization had been issued to Mr. Ayora, or to anyone else, for the operation of an FM broadcast station at or near this building. Agents spoke to the owner of the building, who identified Angel Ayora as the owner of an unauthorized radio transmitter located in the basement. The owner of the building called Mr. Ayora, who came to the building to claim the equipment. Mr. Ayora admitted that he owned and installed the equipment and operated the unlicensed station. The agents delivered a Notice of Unlicensed Operation to Mr. Ayora and verbally warned him that operation of the unlicensed FM radio at 41-15 Warren Street station violated Section 301 of the Communications Act of 1934, as amended (Act), must cease immediately, and could subject him to significant forfeitures. Mr. Ayora did not respond to the Notice.

3. On January 13, 2015, in response to additional complaints of unlicensed operations, agents from the New York Office located the source radio frequency transmissions on the frequency 91.9 MHz to a multi-family dwelling at 40-54 Junction Boulevard in Queens. The agents observed a coaxial cable

[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 unlicensed 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.

running from the dwelling to an FM transmitter antenna. The agents took field strength measurements of the station's signal and again determined that it exceeded the limits for operation under Part 15 of the Rules and therefore required a license. The agents heard the station playing advertisements and identifying itself as "Impacto 2," a station name used by Mr. Ayora during previous unlicensed operations on 91.9 MHz. A check of the Commission's records confirmed that no authorization had been issued to Mr. Ayora, or to anyone else, for the operation of an FM broadcast station at or near this residence. On February 18, 2015, the New York Office issued a Notice of Unlicensed Operation to Mr. Ayora stating his operation of a radio station at 40-54 Junction Boulevard on frequency 91.9 MHz violated Section 301 of the Act, must cease immediately, and could subject him to significant forfeitures. Again, Mr. Ayora did not respond to the Notice.

III. DISCUSSION

4. We find that Mr. Ayora apparently willfully and repeatedly violated Section 301 of the Act by operating a pirate FM station in Queens. 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.[2] 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.[3] 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,[4] and the Commission has so interpreted the term in the Section 503(b) context.[5] The Commission may also assess a forfeiture for violations that are merely repeated, and not willful.[6] The term "repeated" means the commission or omission of such act more than once or for more than one day.[7]

A. Mr. Ayora Apparently Violated Section 301 of the Act by Operating an Unlicensed Broadcast Station

5. We find that the evidence in this case is sufficient to establish that Mr. Ayora willfully and repeatedly 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.[8]

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[2] 47 U.S.C. § 503(b).

[3] 47 U.S.C. § 312(f)(1).

[4] 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.").

[5] *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).

[6] *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).

[7] 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.

[8] 47 U.S.C. § 301.

Agents from the New York Office determined that Mr. Ayora operated an unlicensed broadcast station on 91.9 MHz on separate occasions from 41-15 Warren Street and 40-54 Junction Boulevard in Queens. Commission records reveal that no license or authorization was issued to Mr. Ayora, or to anyone else, to operate a radio station on 91.9 MHz at either of these locations. As a result, we find that Mr. Ayora apparently willfully and repeatedly violated Section 301 of the Act by operating radio transmission equipment without the required Commission authorization from multiple locations in Queens.

B. Proposed Forfeiture

6. Mr. Ayora's repeated unauthorized operation of a pirate FM station warrants a significant penalty. Section 503(b)(2) of the Act authorizes us to assess a forfeiture against Mr. Ayora 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.[9] In exercising our forfeiture authority, we must consider 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."[10] 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.[11] 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.[12]

7. The Commission's *Forfeiture Policy Statement* and Section 1.80 of the Rules set a base forfeiture of $10,000 for operation of a radio station without an instrument of authorization.[13] However, the fact that Mr. Ayora would commit the same violation multiple times after being warned repeatedly that such actions violate the Act demonstrates not only the egregiousness of the violations but also a deliberate disregard for the Act and the Commission's authority, warranting a significant upward forfeiture adjustment.[14] Therefore, applying the *Forfeiture Policy Statement*, Section 1.80 of the Rules, and the statutory factors to the instant case, we conclude that Mr. Ayora is apparently liable for a forfeiture in the amount of twenty thousand dollars ($20,000).

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[9] 47 U.S.C. § 503(b)(2); *see* 47 C.F.R. § 1.80(b). These amounts reflect inflation adjustments to the forfeitures specified in Section 503(b)(2)(D) of the Act ($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 (2013) (setting Sept. 13, 2013, as the effective date for the increases).

[10] 47 U.S.C. § 503(b)(2)(E).

[11] 47 C.F.R. § 1.80(b)(8), Note to paragraph (b)(8).

[12] *Id*.

[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] *See, e.g.*, *Marc-Nus Charles,* Notice of Apparent Liability for Forfeiture, 29 FCC Rcd 5835 (Enf. Bur. 2014) (proposing $20,000 forfeiture for repeat violation of Section 301 of the Act after receiving multiple written warnings), *aff'd*, Forfeiture Order, 29 FCC Rcd 12590 (Enf. Bur. 2014); *Whisler Fleurinor*, Notice of Apparent Liability for Forfeiture, 26 FCC Rcd 2478 (Enf. Bur. 2011) (same), *aff'd*, Forfeiture Order, 26 FCC Rcd 14437 (Enf. Bur. 2011); *Nounone Lubin*, Notice of Apparent Liability for Forfeiture, 25 FCC Rcd 12654 (Enf. Bur. 2010) (same), *aff'd*, Forfeiture Order, 26 FCC Rcd 7758 (Enf. Bur. 2011).

IV. ORDERING CLAUSES

8. 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, Luis Angel Ayora is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of twenty thousand dollars ($20,000) for willful and repeated violations of Section 301 of the Act.[15]

9. **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, Luis Angel Ayora **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 12 below.[16]

10. 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. Luis Angel Ayora 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 that should be followed based on the form of payment selected:

- 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.

11. 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] 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.

12. 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

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[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.

[18] *See* 47 C.F.R. § 1.1914.

[19] 47 C.F.R. §§ 1.16, 1.80(f)(3).

Commission, Enforcement Bureau, Northeast Region, New York Office, 201 Varick Street, Suite 1151, New York, NY 10014, and include the NAL/Acct. No. referenced in the caption. The statement must also be e-mailed to NER-Response@fcc.gov.

13. 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.

14. **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 Luis Angel Ayora at his address of record.

FEDERAL COMMUNICATIONS COMMISSION

Stephen Maguire
District Director
New York Office
Northeast Region
Enforcement Bureau