

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

In the Matter of)	
)	File No.: EB-FIELDSCR-16-00021618 ¹
Michael Dudley)	NAL/Acct. No.: 201732480002
)	FRN: 0025972464
Guntersville, Alabama)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: October 19, 2016

Released: October 20, 2016

By the Regional Director, Region Two, Enforcement Bureau:

I. INTRODUCTION

1. We propose a penalty of \$15,000 against Michael Dudley (Mr. Dudley) for apparently operating an unlicensed radio station in Guntersville, AL. The Commission previously warned Mr. Dudley that operation of this unlicensed station was illegal and that continued operation could result in further enforcement action. Mr. Dudley'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 April 28, 2016, the Commission received a complaint about an unauthorized radio station operating on 103.9 MHz in Guntersville, Alabama. On May 3, 2016, an agent from the Atlanta Office used mobile direction-finding techniques to locate the source of radio frequency transmissions on 103.9 MHz to an FM transmitting antenna located at a residential property in Guntersville, AL. The agent took field strength measurements of the station's signal and determined that the transmissions on 103.9 MHz exceeded the limits for operation under Part 15 of the Commission's Rules (Rules), and therefore required a license.² The agent consulted the Commission's records and confirmed that no authorization had been issued for the operation of an FM broadcast station at or near the residence in Guntersville, AL. When the agent found that the homeowner, Mr. Dudley, was not present at the residence, the agent contacted Mr. Dudley by phone. The agent verbally warned Mr. Dudley that it is illegal to operate a radio station without a valid FCC license. Mr. Dudley said he was out of town but would turn off the transmitter when he returned the next day. During that call, Mr. Dudley also volunteered to surrender his transmitter to the Commission. On the same day, the agent left a Notice of Unauthorized Operation (NOUO) at Mr. Dudley's residence that directed him to cease operating the unlicensed radio station on 103.9 MHz and warned that continued unlicensed operation could result in additional enforcement

¹ The investigation began under EB-FIELDSCR-16-00021617 and was subsequently assigned File No. EB-FIELDSCR-16-00021618. Any future correspondence with the Commission concerning this matter should reflect the new case number.

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 μ V/m at three meters. 47 C.F.R. § 15.239.

action.³ Mr. Dudley subsequently voluntarily surrendered transmitting equipment by mailing it to the Commission's Regional Office in Atlanta.⁴ On May 10, 2016, the Regional Director of the Commission's Atlanta Regional Office sent Mr. Dudley a NOUO.⁵

3. On July 14, 2016, the Commission received a complaint alleging that another unlicensed radio station was illegally operating in the vicinity of Mr. Dudley's residence, on 107.9 MHz. The agent called Mr. Dudley to discuss the operation, and found that Mr. Dudley refused to turn the station off. He claimed that people in his area wanted him on the air. He also maintained that, since he could not apply for a radio license because no Commission application window was open, his "hands were tied," and that he would continue to operate.

4. On July 18, 2016, Commission agents used direction finding techniques to locate the source of radio frequency transmissions on 107.9 MHz to an FM transmitting antenna located at the same residence in Guntersville, AL that was observed on May 3. The agents took field strength measurements of the station's signal and determined that the transmissions on 107.9 MHz exceeded the limits for operation under Part 15 of the Rules, and therefore required a license. One of the agents consulted the Commission's records and confirmed that no authorization had been issued for the operation of an FM broadcast station at or near the residence in Guntersville, AL. The station stopped operating as soon as the field strength measurements were taken. No one responded when the agents knocked on the door, so one of the agents left a handwritten NOUO under the door that directed Mr. Dudley to cease operating the unlicensed radio station on 107.9 MHz and warned that continued unlicensed operation could result in additional enforcement action.⁶ Mr. Dudley contacted the agent later the same day and admitted he was operating the station without a license.

III. DISCUSSION

5. We find that Mr. Dudley apparently willfully and repeatedly violated Section 301 of the Communications Act of 1934, as amended (Act).⁷ Section 301 of the Act states that no person shall use or operate an apparatus for the transmission of energy or communications or signals by radio within the United States without a license granted by the Commission. On May 3, 2016, an agent determined that Mr. Dudley operated an unlicensed radio station on 103.9 MHz. The agent warned Mr. Dudley verbally and in writing that such unlicensed operation violated the Act. Mr. Dudley expressly acknowledged that operation of his unlicensed station was illegal by signing the Dudley Voluntary Relinquishment Form and surrendering the illegal radio equipment to the Commission.⁸ On July 18, 2016, an agent from the Atlanta Office determined that Mr. Dudley operated an unlicensed radio station on 107.9 MHz. Mr. Dudley was warned again in writing that such unlicensed operations violated the Act. Nonetheless, Mr. Dudley continued to operate an unlicensed radio station. As a result, we find Mr. Dudley apparently willfully and repeatedly violated Section 301 of the Act by operating an unlicensed radio station.

6. Section 503(b) of the Act authorizes the Commission to impose a forfeiture against any entity that "willfully or repeatedly fail[s] to comply with any of the provisions of [the Act] or of any rule,

³ *Michael Dudley*, Notice of Unlicensed Operation (EB May 3, 2016)(on file in EBATS File No. EB-FIELDSCR-16-00021618).

⁴ *See* Voluntarily Relinquished Illegal Radio Equipment, dated May 11, 2016, signed by Michael Dudley (on file in EBATS File No. EB-FIELDSCR-16-00021618) (Dudley Voluntary Relinquishment Form).

⁵ *Michael Dudley*, Notice of Unlicensed Operation (EB May 10, 2016)(on file in EBATS File No. EB-FIELDSCR-16-00021618).

⁶ *Michael Dudley*, Notice of Unlicensed Operation (EB July 18, 2016)(on file in EBATS File No. EB-FIELDSCR-16-00021618).

⁷ 47 U.S.C. § 301.

⁸ Dudley Voluntary Relinquishment Form.

regulation, or order issued by the Commission.”⁹ Here, Section 503(b)(2)(D) of the Act authorizes us to assess a forfeiture against Mr. Dudley of up to \$18,936 for each day of a continuing violation, up to a statutory maximum of \$142,021 for a single act or failure to act.¹⁰ 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.”¹¹ 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.¹² 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.¹³

7. Section 1.80(b) of the Rules sets a base forfeiture of \$10,000 for operating without an instrument of authorization.¹⁴ We have discretion, however, to depart from these guidelines, taking into account the particular facts of each individual case.¹⁵ The Commission warned Mr. Dudley verbally and in writing that operation of an unlicensed station is illegal. Mr. Dudley clearly demonstrated that he understood those warnings when he voluntarily surrendered the equipment for destruction, by signing the Dudley Voluntary Relinquishment Form stating that the equipment was illegal.¹⁶ Since then, Mr. Dudley resumed illegal operation, and was again warned verbally and in writing that continued unlicensed operations could result in additional enforcement action.¹⁷ The fact that Mr. Dudley continued to operate an unlicensed station after being put on notice that his actions contravened the Act, the Rules, and related

⁹ 47 U.S.C. § 503(b).

¹⁰ See 47 U.S.C. § 503(b)(2)(D); 47 CFR §§ 1.80(b)(7), (9). 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 (DCIA), as further amended by the Federal Reports Elimination Act of 1998, Pub. L. No. 105-362, Sec. 1301, 112 Stat. 3280, and as further amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, Sec. 701, Pub. L. No. 114-74, 129 Stat. 599 (codified as amended 28 U.S.C. § 2461 note) (the 2015 Inflation Adjustment Act), requires the Commission to adjust its penalties for inflation and publish interim final rules with the initial penalty adjustment amounts by July 1, 2016 and new penalty levels must take effect no later than August 1, 2016. See 28 U.S.C. § 2461 note. The Commission published those interim final rules on June 30, 2016. See *Amendment of Section 1.80(b) of the Commission’s Rules, Adjustment of Civil Monetary Penalties to Reflect Inflation*, Order, 31 FCC Rcd 6793 (EB 2016); see also *Adjustment of Civil Monetary Penalties to Reflect Inflation*, 81 Fed. Reg. 42554 (June 30, 2016) (setting August 1, 2016, as the effective date for the increases). The adjustments to the civil monetary penalties adopted by the Bureau pursuant to 2015 Inflation Adjustment Act will apply only to such penalties assessed after the effective date of the amendments to Section 1.80(b). See 28 U.S.C. § 2461 note (6).

¹¹ 47 U.S.C. § 503(b)(2)(E).

¹² 47 CFR § 1.80(b)(8), Note to paragraph (b)(8).

¹³ *Id.*

¹⁴ 47 CFR § 1.80(b).

¹⁵ *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).

¹⁶ Dudley Voluntary Relinquishment Form.

¹⁷ *Michael Dudley*, Notice of Unlicensed Operation (EB July 18, 2016)(on file in EBATS File No. EB-FIELDSCR-16-00021618).

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.¹⁸ After applying the *Forfeiture Policy Statement*, Section 1.80 of the Rules, and the statutory factors, we propose a total forfeiture of \$15,000, for which Mr. Dudley is apparently liable.

IV. ORDERING CLAUSES

8. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Act¹⁹ and Sections 1.80 of the Rules,²⁰ Michael Dudley is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of FIFTEEN THOUSAND DOLLARS (\$15,000) for willful and repeated violations of Section 301 of the Act.²¹

9. **IT IS FURTHER ORDERED** that, pursuant to Section 1.80 of the Rules,²² within thirty (30) calendar days of the release date of this Notice of Apparent Liability for Forfeiture, Michael Dudley **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.

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. Michael Dudley shall send electronic notification of payment to Janet Moran at Janet.Moran@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.²³ 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.

¹⁸ See *Robert Brown*, Memorandum Opinion and Order, 27 FCC Rcd 6975 (EB 2012), *aff'g*, Forfeiture Order, 26 FCC Rcd 6854 (EB 2011) (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); *Lloyd Morris*, Memorandum Opinion and Order, 27 FCC Rcd 6979 (EB 2012), *aff'g*, Forfeiture Order, 26 FCC Rcd 6856 (EB 2011) (same).

¹⁹ 47 U.S.C. § 503(b).

²⁰ 47 CFR § 1.80.

²¹ 47 U.S.C. § 301.

²² 47 CFR § 1.80.

²³ An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

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, SW, Room 1-A625, Washington, DC 20554.²⁴ 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.²⁵ The written statement must be mailed to the Office of the Secretary, Federal Communications Commission, 445 12th Street, SW, Washington, DC 20554, ATTN: Enforcement Bureau – Office of the Field Director, and must include the NAL/Account Number referenced in the caption. The statement must also be e-mailed to SCR-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 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.

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 Michael Dudley at his address of record.

FEDERAL COMMUNICATIONS COMMISSION

Ronald Ramage
Regional Director
Region Two
Enforcement Bureau

²⁴ See 47 CFR § 1.1914.

²⁵ 47 CFR §§ 1.16, 1.80(f)(3).