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

In the Matter of	)	
	)	File No.: EB-FIELDNER-15-00019024
Vasco Oburoni,	)	NAL/Acct. No: 201732260001
	)	FRN: 0026006791
Worcester, Massachusetts	)	
	)	
	)	
	)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: November 9, 2016 **Released: November 10, 2016**

By the Regional Director, Region One, Enforcement Bureau:

I. INTRODUCTION

1. We propose a penalty of $15,000 against Vasco Oburoni for operating an unlicensed radio station on 102.3 MHz in Worcester, Massachusetts. The Commission previously warned Mr. Oburoni that operation of this unlicensed station was illegal and that continued operation could result in further enforcement action. Mr. Oburoni'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 21, 2015, the Enforcement Bureau's Boston Field Office (Boston Office) received a complaint alleging that an unlicensed FM broadcast station operating on 102.3 MHz was causing interference to Station WKLB-FM, 102.5 FM in the vicinity of Worcester, Massachusetts. On April 28, 2015, two agents from the Boston Office used mobile direction-finding techniques to identify the source of radio frequency transmissions on the frequency 102.3 MHz as an FM antenna mounted on the roof of Christian Praise International's (CPI) church building located at 52 Ward Street, Worcester, Massachusetts. The agents recorded the station's audio stream and photographed the FM antenna and its coaxial cable leading into the building. On June 11, 2015, the agents returned to 52 Ward Street and, upon taking field strength measurements of the station's signal, determined that the transmissions on 102.3 MHz exceeded the limits for operation under Part 15 of the Commission's rules (Rules), and therefore required a license.[1] The agents consulted the Commission's records and confirmed that the Commission had not authorized an FM broadcast station to operate on 102.3 MHz at or near 52 Ward Street. On June 11, 2015, the agents posted a Notice of Unlicensed Radio Operation on the door of 52 Ward Street (Field Notice).[2] On June 30, the Boston Office mailed a Warning of Unlicensed Operation to

[1] 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 micro volts per meter ("µV/m") at three meters. 47 CFR § 15.239. Measurements taken on June 11, 2015, showed a field strength that exceeded the permissible level for a non-licensed Part 15 transmitter.

[2] *Owner/Occupant*, Notice of Unlicensed Radio Operation (Boston Field Office, EB, June 11, 2015).

Mr. Oburoni (Warning Letter).[3] On July 1, 2015, the Boston Office mailed a Notice of Unlicensed Operation to Mr. Oburoni (NOUO and, together with the Field Notice and Warning Letter, the Enforcement Actions).[4] Each of the Enforcement Actions informed Mr. Oburoni that an unlicensed radio station was operating at 102.3 MHz at 52 Ward Street and warned him that continued unlicensed operations could result in additional enforcement action.

3. On July 10, 2015, Mr. Oburoni met with an agent at the Boston Office to discuss the Enforcement Actions. During the meeting, Mr. Oburoni admitted that he was the operator of the radio station, acknowledged that he did not have Commission authorization to operate an FM broadcast station on 102.3 MHz, and requested information on how to obtain a license from the Commission. The agent instructed Mr. Oburoni that he must immediately cease operating the unlicensed station. The agent also directed Mr. Oburoni to the Media Bureau's website to learn more about the process of obtaining a license to operate an FM broadcast station.

4. On May 2, 2016, agents from the Boston Office observed that a station was again operating on 102.3 MHz in Worcester, Massachusetts and recorded the station's audio stream. On May 4, 2016, the agents returned to Worcester and, after confirming that an unlicensed station was still operating on 102.3 MHz, used mobile direction-finding techniques to identify the source of radio frequency transmissions on the frequency 102.3 MHz as an FM antenna mounted on the roof of CPI's church building located at 52 Ward Street, Worcester, Massachusetts. The agents then took field strength measurements of the station's signal and determined that the transmissions on 102.3 MHz exceeded the limits for operation under Part 15 of the Commission's rules (Rules), and therefore required a license.[5] The agents consulted the Commission's records and confirmed that the Commission had not authorized an FM broadcast station to operate on 102.3 MHz at or near 52 Ward Street.

III. DISCUSSION

5. We find that Mr. Oburoni willfully and repeatedly violated Section 301 of the Communications Act of 1934, as amended (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 without a license granted by the Commission.[6] Here, agents from the Boston Office determined that Mr. Oburoni operated an unlicensed FM broadcast station on 102.3 MHz using a transmitter located within the CPI building at 52 Ward Street on April 28, 2015; June 11, 2015; May 2, 2016; and May 4, 2016.

6. As discussed above, following the June 11, 2015 investigation, the agents from the Boston Office issued to Mr. Oburoni the Enforcement Actions, each of which explained that Mr. Oburoni's operation of an unlicensed transmitter on 102.3 MHz was not authorized and must immediately cease. In response to the Enforcement Actions, Mr. Oburoni met with agents of the Boston Office, where he admitted that he was the operator of the station on 102.3 MHz in Worcester, acknowledged that he did not possess authority from the Commission to operate on that frequency, and inquired about the process for obtaining a license from the Commission.[7] Since that time, however, Mr. Oburoni has not sought authority from the Commission to operate on 102.3 MHz from CPI's facilities at 52 Ward Street, yet he has continued to operate the unlicensed station in apparent willful and repeated violation of Section 301 of the Act.

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[3] *Vasco Oburoni*, Warning of Unlicensed Operation (Boston Field Office, EB, June 30, 2015).

[4] *Vasco Oburoni*, Notice of Unlicensed Operation (Boston Field Office, EB, July 1, 2015).

[5] 47 CFR § 15.239. Measurements taken on May 4, 2016, showed a field strength that exceeded the permissible level for a non-licensed Part 15 transmitter.

[6] 47 U.S.C. § 301.

[7] *See* paragraph 3, *supra*.

7. 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, regulation, or order issued by the Commission."[8] Here, Section 503(b)(2)(E) of the Act authorizes us to assess a forfeiture against Mr. Oburoni 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.[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] Section 1.80(b) of the Rules sets a base forfeiture of $10,000 for operation without an instrument of authorization for each violation or each day of a continuing violation.[13]

8. Through its investigation, the Enforcement Bureau has determined that Mr. Oburoni operated the Station on May 2, 2016 and May 4, 2016 in apparent violation of Section 301 of the Act. In light of these findings, we propose a base forfeiture of $10,000 for this apparent violation of Section 301 of the Act. We have discretion, however, to depart from these guidelines, taking into account the particular facts of each individual case.[14] In this regard, we note that, on June 11, 2015, June 30, 2015

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[8] 47 U.S.C. § 503(b).

[9] *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).

[10] 47 U.S.C. § 503(b)(2)(E).

[11] 47 CFR § 1.80(b)(8), Note to paragraph (b)(8); *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).

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

[13] 47 CFR § 1.80(b).

[14] *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

(continued….)

and July 1, 2015, the Boston Office issued to Mr. Oburoni the Enforcement Actions, each of which warned that unlicensed operation of a radio station violated the law and could subject him to further enforcement action, including a substantial monetary forfeiture. The fact that Mr. Oburoni continued to operate an unlicensed station after being put on notice that his actions contravened the Act, the Rules, and related Commission decisions and orders, demonstrates a deliberate disregard for the Commission's authority and requirements. Based on the record in this case, and after applying the *Forfeiture Policy Statement*, Section 1.80 of the Rules, and the statutory factors, we therefore propose a total forfeiture of $15,000 for which Mr. Oburoni is apparently liable.

IV. CONCLUSION

9. We have determined that Mr. Oburoni apparently willfully and repeatedly violated Section 301 of the Act. As such, Mr. Oburoni is apparently liable for a forfeiture of $15,000.

V. ORDERING CLAUSES

10. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Act[15] and Section 1.80 of the Rules,[16] Vasco Oburoni 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.[17]

11. **IT IS FURTHER ORDERED** that, pursuant to Section 1.80 of the Rules,[18] within thirty (30) calendar days of the release date of this Notice of Apparent Liability for Forfeiture, Vasco Oburoni **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 14 below.

12. 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. Vasco Oburoni shall send electronic notification of payment to NER-Response@fcc.gov and Matthew.Gibson@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.[19] 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.

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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).

[15] 47 U.S.C. § 503(b).

[16] 47 CFR § 1.80.

[17] 47 U.S.C. § 301.

[18] 47 CFR § 1.80.

[19] 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 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.

13. 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.[20] 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.

14. 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.[21] The written statement must be mailed to the Federal Communications Commission, Enforcement Bureau, Region One, Columbia Office, 9200 Farm House Lane, Columbia, MD 21046, and must include the NAL/Account Number referenced in the caption. The statement must also be e-mailed to NER-Response@fcc.gov and Matthew.Gibson@fcc.gov.

15. 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.

16. **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 Vasco Oburoni at 52 Ward Street, Worcester, Massachusetts 01610.

FEDERAL COMMUNICATIONS COMMISSION

David Dombrowski
Regional Director, Region One,
Enforcement Bureau

[20] *See* 47 CFR § 1.1914.

[21] 47 CFR §§ 1.16, 1.80(f)(3).