

Before the  
Federal Communications Commission  
Washington, DC 20554

In the Matter of	)	
	)	File No.: EB-FIELDSCR-15-00019644
Wilner Lundi	)	NAL/Acct. No.: 201632600005
	)	FRN: 0025853961
Lake Worth, Florida	)	

**NOTICE OF APPARENT LIABILITY FOR FORFEITURE**

**Adopted: August 31, 2016**

**Released: September 1, 2016**

By the Regional Director, Region Two, Enforcement Bureau:

**I. INTRODUCTION**

1. We propose a penalty of \$15,000 against Wilner Lundi for operating unlicensed radio stations on 91.5 and 104.7 MHz in Lake Worth, Florida. The Commission previously warned Mr. Lundi that operation of an unlicensed station was illegal and that continued operation could result in further enforcement action. Mr. Lundi’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 22, 2013, agents from the Enforcement Bureau’s Miami Office (Miami Office) used mobile direction-finding techniques to locate the source of radio frequency transmissions on the frequency 91.5 MHz to an FM transmitting antenna located at a residential property in Delray Beach, Florida. The agents determined that the transmissions on 91.5 MHz exceeded the limits for operation under Part 15 of the Commission’s rules (Rules),<sup>1</sup> and therefore required a license. 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 this address. During the inspection with the property owner, the property owner’s spouse called the operator of the station, who identified himself as “Tiwil.” One of the agents recognized “Tiwil” as Wilner Lundi on the basis of a previous investigation, and verbally warned him of the unlicensed station.

3. On January 15, 2015, agents from the Miami Office used mobile direction-finding techniques to locate the source of radio frequency transmissions on the frequency 104.7 MHz to an FM transmitting antenna located at a property in Lake Worth, Florida. The agents determined that the transmissions on 104.7 MHz exceeded the limits for operation under Part 15 of the Rules, and therefore required a license. 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 this address.

4. On July 9 and December 3, 2015, in response to complaints, agents from the Miami Office used mobile direction-finding techniques to locate the source of radio frequency transmissions on the frequency 91.5 MHz to an FM transmitting antenna located at the same property where agents located

<sup>1</sup> 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.

104.7 MHz on January 15, 2015, in Lake Worth, Florida. The station on 104.7 MHz was no longer operating from this property. The agents determined that the transmissions on 91.5 MHz exceeded the limits for operation under Part 15 of the Rules, and therefore required a license. The agents also determined that no authorization had been issued to operate an FM station on 91.5 MHz or any other frequency at or near this location in Lake Worth, Florida. In response to a December 2015 Warning of Unlicensed Operation issued to the property owners,<sup>2</sup> the property owner stated via telephone that his tenant sublet a small structure in the rear of the property to “Radio Super FM” and via email provided contact phone numbers for the operator.<sup>3</sup> The property owner also stated that his tenant identified Mr. Lundi from a photograph provided by an agent as the individual “who removed the antennae and equipment.”<sup>4</sup>

5. An agent from the Miami Office subsequently found the station’s website, [www.radiosuperfm.org](http://www.radiosuperfm.org),<sup>5</sup> an online audio stream for “Radio Super FM,”<sup>6</sup> and a Facebook page for “Brothertiwill Will”<sup>7</sup> which all listed one of the phone numbers provided by the property owner. Mr. Lundi is also associated with a corporation, “Radio Super FM, Inc.,”<sup>8</sup> according to the Florida Department of State’s Division of Corporations public records. Agents from the Miami Office also identified Mr. Lundi by comparing his Florida driver’s license photograph to pictures of “Brothertiwill Will” posted on the Internet.

### III. DISCUSSION

6. We find that Mr. Lundi apparently willfully and repeatedly violated Section 301 of the Communications Act of 1934, as amended (Act).<sup>9</sup> 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 22, 2013, agents from the Miami Office issued a verbal warning to Mr. Lundi, notifying him that unlicensed radio operations violate the Act and could result in significant forfeiture penalties. On January 15, 2015, agents from the Miami Office determined that Mr. Lundi operated an unlicensed radio station on 104.7 MHz in Lake Worth, Florida.<sup>10</sup> On July 9 and December 3, 2015, agents from the Miami Office determined that Mr. Lundi operated an unlicensed radio station on 91.5 MHz in Lake Worth, Florida.<sup>11</sup> As a result, we find Mr. Lundi apparently willfully and repeatedly violated Section 301 of the Act by operating an unlicensed radio station.

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<sup>2</sup> See MCALISTER HAROLD JANICE TRUST; MCALISTER HAROLD J TR; MCALISTER JANICE TR, Warning of Unlicensed Operation (Enf. Bur. December 8, 2015) (on file in EB-FIELDSCR-15-00019644).

<sup>3</sup> See E-mail from Harold McAlister, property owner, to Resident Agent, Miami Office, South Central Region, Enforcement Bureau (December 15, 2015, 11:44 AM EST) (on file in EB-FIELDSCR-15-00019644).

<sup>4</sup> See E-mail from Harold McAlister, property owner, to Resident Agent, Miami Office, South Central Region, Enforcement Bureau (December 22, 2015, 9:01 AM EST) (on file in EB-FIELDSCR-15-00019644).

<sup>5</sup> See [www.radiosuperfm.org](http://www.radiosuperfm.org) (last visited December 15, 2015).

<sup>6</sup> TuneIn webpage, [www.tunein.com](http://www.tunein.com) (last visited December 15, 2015).

<sup>7</sup> Facebook homepage, [www.facebook.com/brothertiwill](http://www.facebook.com/brothertiwill) (last visited May 31, 2016).

<sup>8</sup> Florida Department of State, Division of Corporations Homepage, [www.sunbiz.org](http://www.sunbiz.org) (last visited December 15, 2015).

<sup>9</sup> 47 U.S.C. § 301.

<sup>10</sup> See *supra* para. 3.

<sup>11</sup> See *supra* para. 4.

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.<sup>12</sup> Here, Section 503(b)(2)(D) of the Act authorizes us to assess a forfeiture against Mr. Lundi 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.<sup>13</sup> 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.”<sup>14</sup> 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.<sup>15</sup> 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.<sup>16</sup>

8. Section 1.80(b) of the Rules sets a base forfeiture of \$10,000 for operation without an instrument of authorization.<sup>17</sup> We have discretion, however, to depart from these guidelines, taking into account the particular facts of each individual case.<sup>18</sup> As the record reflects, Mr. Lundi received a verbal warning that unlicensed radio operations violated the Act and could subject the operator to significant forfeitures. Despite this warning, Mr. Lundi operated an unlicensed FM broadcast station from a property in Lake Worth, Florida, on January 15, July 9, and December 3, 2015. The fact that Mr. Lundi 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

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<sup>12</sup> 47 U.S.C. § 503(b).

<sup>13</sup> See 47 U.S.C. § 503(b)(2)(D); 47 C.F.R. §§ 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, DA 16-644 (Enf. Bur. 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).

<sup>14</sup> 47 U.S.C. § 503(b)(2)(E).

<sup>15</sup> 47 C.F.R. § 1.80(b)(8), Note to paragraph (b)(8).

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> *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).

requirements. Thus, we find that an upward adjustment in the forfeiture amount of \$5,000 is warranted.<sup>19</sup> 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. Lundi is apparently liable.

#### IV. ORDERING CLAUSES

9. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Act<sup>20</sup> and Section 1.80 of the Rules,<sup>21</sup> Wilner Lundi 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.<sup>22</sup>

10. **IT IS FURTHER ORDERED** that, pursuant to Section 1.80 of the Rules,<sup>23</sup> within thirty (30) calendar days of the release date of this Notice of Apparent Liability for Forfeiture, Wilner Lundi **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. Wilner Lundi shall send electronic notification of payment to Steven Spaeth at [steven.spaeth@fcc.gov](mailto:steven.spaeth@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.<sup>24</sup> 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 –

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<sup>19</sup> 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); *Lloyd 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 13736 (Enf. Bur. 2010) (same).

<sup>20</sup> 47 U.S.C. § 503(b).

<sup>21</sup> 47 C.F.R. § 1.80.

<sup>22</sup> 47 U.S.C. § 301.

<sup>23</sup> 47 C.F.R. § 1.80.

<sup>24</sup> An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

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.<sup>25</sup> 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.<sup>26</sup> The written statement must be mailed to the Federal Communications Commission, Enforcement Bureau, Region Two, Miami Office, P.O. Box 266468, Weston, FL 33326, and must include the NAL/Account Number referenced in the caption. The statement must also be e-mailed to steven.spaeth@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.

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 Wilner Lundi at his address of record.

**FEDERAL COMMUNICATIONS COMMISSION**

Ronald D. Ramage  
Regional Director  
Region Two  
Enforcement Bureau

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<sup>25</sup> See 47 C.F.R. § 1.1914.

<sup>26</sup> 47 C.F.R. §§ 1.16, 1.80(f)(3).