

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

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

FORFEITURE ORDER

Adopted: October 16, 2017

Released: October 17, 2017

By the Regional Director, Region Two, Enforcement Bureau:

I. INTRODUCTION

1. We impose a penalty of \$15,000 on Michael Dudley for operating an unlicensed radio station on 103.9 MHz in Guntersville, Alabama in violation of Section 301 of the Communications Act of 1934, as amended (Act).¹ Mr. Dudley does not deny that he operated an illegal station, but argues that the station did not interfere with any other stations, that no one was harmed by the station's operation, and that he does not have the resources to pay the forfeiture. After reviewing Mr. Dudley's response to the *NAL*, we find no reason to cancel, withdraw, or reduce the proposed penalty, and assess the \$15,000 forfeiture the Bureau previously proposed.

II. BACKGROUND

2. On May 3, 2016, in response to a complaint, an Agent from the Atlanta Field Office (Atlanta Office) of the Commission's Enforcement Bureau (Bureau) conducted an investigation and determined that Mr. Dudley was operating an unlicensed radio station on 103.9 MHz at his residence in Guntersville, Alabama.² When the Agent determined that Mr. Dudley was not at his residence, he left a hand-written Notice of Unauthorized Operation (NOUO).³ Later, the Agent telephoned Mr. Dudley and provided a verbal warning that operation of a broadcast station without authorization is illegal.⁴ During the telephone call, Mr. Dudley promised to turn the transmitter off.⁵ The Bureau followed up by mailing him a NOUO on May 10, 2016.⁶ On May 11, Mr. Dudley voluntarily surrendered the transmitting equipment by mailing it to the Atlanta Office.⁷

3. On July 14, 2016, in response to another complaint about an unauthorized station on

¹ 47 U.S.C. § 301.

² *Michael Dudley, Guntersville, AL*, Notice of Apparent Liability for Forfeiture, 31 FCC Rcd 11736, 11736, para. 2 (EB 2016) (*NAL*). The *NAL* includes a more complete discussion of the facts and history of this case and is incorporated herein by reference.

³ *NAL*, 31 FCC Rcd at 11736, para. 2.

⁴ *NAL*, 31 FCC Rcd at 11736, para. 2.

⁵ When the Agent found that Mr. Dudley was not at home, the Agent telephoned Mr. Dudley. Mr. Dudley said during the telephone call that he was out of town but would turn the transmitter off when he returned the next day. *NAL*, 31 FCC Rcd at 11736, para. 2.

⁶ *NAL*, 31 FCC Rcd at 11736, para. 2.

⁷ *NAL*, 31 FCC Rcd at 11736, para. 2.

107.9 MHz near Mr. Dudley's residence, an Agent again called Mr. Dudley.⁸ Mr. Dudley admitted that he was operating another unauthorized station and refused to turn it off.⁹ Agents visited Mr. Dudley's residence on July 18, 2016, and confirmed that an unauthorized station was being operated at that residence.¹⁰ No one responded when the Agents knocked on the door, but Mr. Dudley contacted one of the Agents later that day and admitted again that he was operating a station without a license.¹¹

4. On October 20, 2016, the Bureau issued the *NAL*, proposing a \$15,000 forfeiture against Mr. Dudley for his apparent willful and repeated violation of Section 301 Act¹² by operating an FM radio broadcast transmitter without Commission authorization. That proposed forfeiture amount was comprised of a base forfeiture of \$10,000, and an upward adjustment of \$5,000 due to Mr. Dudley's deliberate disregard for the Commission's authority and requirements by operating the unauthorized station after being put on notice that his actions contravened the Act.¹³

5. On October 31, 2016, Mr. Dudley filed a response to the *NAL*.¹⁴ Although he does not deny operating the station, Mr. Dudley makes a number of arguments as to why the *NAL* should be cancelled and the forfeiture reduced or rescinded. Specifically, Mr. Dudley argues that he had ceased operating the station, that the station had not caused interference and so had not harmed anyone, and that he is unable to pay the forfeiture.

III. DISCUSSION

6. For the reasons discussed below, we reject Mr. Dudley's arguments and assess a \$15,000 forfeiture against Mr. Dudley for operating an unlicensed radio station in violation of Section 301 of the Act.

A. Post-Sanction Compliance Does Not Warrant a Reduction in the Proposed Penalty

7. Mr. Dudley does not deny the facts in the *NAL*. Rather, he argues in part that he should not be liable for a forfeiture because he ceased operating the station.¹⁵

8. We are unpersuaded. Mr. Dudley's one page *NAL* Response does not indicate whether he ceased the illegal operations after the issuance of the Bureau *NAL* or if instead he is merely referring to the interim period between when he ceased operations temporarily between the first set of NOUOs and his resumption of illegal broadcasting. In either event, we decline to reduce or cancel the forfeiture. The Commission has held that remedial action taken in response to Commission enforcement action is not a reason to reduce a forfeiture,¹⁶ and Mr. Dudley provides no basis for departing from that precedent here. Both potential scenarios merely evidence, at best, compliance after an enforcement action was taken. Moreover, in the latter scenario, his remedial action was only temporary. Mr. Dudley began broadcasting without a Commission license again just a few months after suspending his operations. That he changed transmitting frequencies only shows that he intended to evade Commission detection. Thus, we decline to

⁸ *NAL*, 31 FCC Rcd at 11737, para. 3.

⁹ *NAL*, 31 FCC Rcd at 11737, para. 3.

¹⁰ *NAL*, 31 FCC Rcd at 11737, para. 4.

¹¹ *NAL*, 31 FCC Rcd at 11737, para. 4.

¹² 47 U.S.C. § 301.

¹³ *NAL*, 31 FCC Rcd at 11738-39, para. 7.

¹⁴ Michael Dudley, Response to Notice of Apparent Liability (Oct. 31, 2016) (on file in File No. EB-FIELDSCR-16-00021618) (*NAL* Response).

¹⁵ *NAL* Response at 1.

¹⁶ See *Dialing Services*, Forfeiture Order, 32 FCC Rcd 6192, para. 32 (2017).

reduce or cancel the proposed forfeiture due to actions Mr. Dudley may have taken after we took enforcement action.

B. Mr. Dudley's Assertion that He Did Not Cause Harmful Interference Is Irrelevant to Establishing a Section 301 Violation

9. We are unpersuaded by Mr. Dudley's argument that the proposed fine should be reduced because of his claim that his station did not cause interference and that no one was harmed by his unauthorized operation of the station. First, this claim is inconsistent with two complaints received by the Commission regarding Mr. Dudley's unauthorized operation.¹⁷ Second, even if Mr. Dudley's statements were true, the Commission has previously considered and rejected this argument. Specifically, the Commission found that Section 301 does not require a finding of interference before the Commission can prohibit unauthorized transmissions, because the Section 301 "licensing scheme is intended to facilitate broadcasting by protecting the service areas of those licensed to broadcast. Otherwise, the potential for chaos on the airwaves would severely undermine the ability of others to use the radio spectrum."¹⁸ Enforcement of Section 301, therefore, is critical to protect the integrity of the licensing system and the operations of licensed users, regardless of whether the unauthorized transmission causes harmful interference. Consequently, Mr. Dudley's assertion that he did not cause interference is neither relevant to our finding of a Section 301 violation nor factually supported by the record. We thus decline to reduce or cancel the proposed forfeiture on this basis.

C. Mr. Dudley Has Provided No Basis to Reduce the Forfeiture for Inability to Pay

10. We decline to reduce or cancel the forfeiture on the basis of Mr. Dudley's unsupported statement that he has no assets or income, suggesting that the forfeiture amount should be reduced or cancelled based on his inability to pay.¹⁹ The *NAL* stated that the Commission will not consider a request for a reduction or cancellation of a proposed forfeiture unless the person who is subject to the *NAL* has requested such reduction or cancellation and submitted "a detailed factual statement supported by appropriate documentation and affidavits pursuant to Sections 1.16 and 1.80(f)(3) of the rules."²⁰ The *NAL* also explained that to support a claim of inability to pay, Mr. Dudley would need to submit (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.²¹ Mr. Dudley did not submit any of the documentation or affidavits required by the Commission's rules that would enable the Commission to evaluate an appropriate forfeiture based on his income. Accordingly, we find no basis to reduce or cancel the forfeiture based on an alleged inability to pay.

¹⁷ See Section II above.

¹⁸ *Application for Review of Stephen Paul Dunifer*, Memorandum Opinion and Order, 11 FCC Rcd 718, 726-27, paras. 21-22 (1995) (*subsequent history omitted*), citing *National Broadcasting Co. v. United States*, 319 U.S. 190, 209-17 (1943).

¹⁹ *NAL* Response at 1.

²⁰ *NAL*, 31 FCC Rcd at 11740, para. 12.

²¹ *NAL*, 31 FCC Rcd at 11740, para. 13.

IV. CONCLUSION

11. Based on the record before us, and in light of the applicable statutory factors,²² we conclude that Mr. Dudley willfully and repeatedly violated Section 301 by operating an unauthorized radio station, and that the proposed forfeiture of \$15,000 properly reflects the seriousness, duration, and scope of Mr. Dudley's violations. We decline to cancel or reduce the \$15,000 forfeiture proposed in the *NAL*.

V. ORDERING CLAUSES

12. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Act,²³ and Section 1.80 of the Rules,²⁴ MICHAEL DUDLEY IS LIABLE FOR A MONETARY FORFEITURE in the amount of Fifteen Thousand dollars (\$15,000) for willfully and repeatedly violating Section 301 of the Act.

13. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within thirty (30) calendar days after the release of this Forfeiture Order.²⁵ If the forfeiture is not paid within the period specified, the case may be referred to the U.S. Department of Justice for enforcement of the forfeiture pursuant to Section 504(a) of the Act.²⁶

14. 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 and SCR-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.²⁷ When completing the 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 completed Form 159) must be mailed to the 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,

²² 47 U.S.C. § 503(b)(2)(E); 47 CFR 1.80; *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*, Memorandum Opinion and Order, 15 FCC Rcd 303 (1999).

²³ 47 U.S.C. § 503(b).

²⁴ 47 CFR § 1.80.

²⁵ *Id.*

²⁶ 47 U.S.C. § 504(a).

²⁷ An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

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.

15. 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 20554.²⁸ Questions regarding payment procedures should be directed to the Financial Operations Group Help Desk by telephone, 1-877-480-3201, or by e-mail, ARINQUIRIES@fcc.gov.

16. **IT IS FURTHER ORDERED** that a copy of this Forfeiture Order 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

²⁸ See 47 CFR § 1.1914.