

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of)
Jean Yves Tullias) File No.: EB-FIELDNER-15-00019483
Irvington, New Jersey) NAL/Acct. No.: 201532380002
) FRN: 0024880304

FORFEITURE ORDER

Adopted: October 25, 2017

Released: October 26, 2017

By the Regional Director, Region One, Enforcement Bureau:

I. INTRODUCTION

1. We impose a penalty of \$3,800 against Jean Yves Tullias for operating an unlicensed radio station in Irvington, New Jersey. 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. The Commission previously warned Mr. Tullias in writing that pirate operations are illegal. Mr. Tullias does not deny the violations, but requests reconsideration of the penalty against him in light of his purported inability to pay. We find that reducing the forfeiture to \$3,800 is appropriate based on Mr. Tullias’ demonstrated inability to pay.

II. BACKGROUND

2. On September 11, 2015, the Enforcement Bureau’s (Bureau) New York Office issued a Notice of Apparent Liability for Forfeiture (NAL) in the amount of \$15,000 to Mr. Tullias¹ for willful and repeated violation of Section 301 of the Communications Act of 1934, as amended (Act)² for operating an unlicensed radio transmitter on 107.9 MHz in Irvington, New Jersey. In his NAL Response, Mr. Tullias does not dispute the violation but asserts that he is unable to pay the proposed forfeiture in light of his limited income and submitted federal tax returns supports his request to cancel or reduce the proposed forfeiture.³

III. DISCUSSION

3. The Bureau proposed a forfeiture in this case in accordance with Section 503(b) of the Act,⁴ Section 1.80 of the Rules,⁵ and the Commission’s Forfeiture Policy Statement.⁶ When we assess forfeitures, Section 503(b)(2)(E) requires that we take into account the “nature, circumstances, extent, and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior

¹ John Yves Tullias, Notice of Apparent Liability for Forfeiture, 30 FCC Rcd 9889 (Enf. Bur. 2015).

² 47 U.S.C. § 301.

³ See Jean Yves Tullias, Response to Notice of Apparent Liability for Forfeiture (Oct. 19, 2015) (on file in EB-FIELDNER-15-00019483).

⁴ 47 U.S.C. § 503(b).

⁵ 47 CFR § 1.80.

⁶ 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).

offenses, ability to pay, and such other matters as justice may require.”⁷ As discussed below, we have fully considered Mr. Tullias’ *NAL Response* and find that a forfeiture reduction is warranted based on inability to pay.

4. Mr. Tullias seeks cancellation or reduction of the proposed forfeiture based on an inability to pay, and provided financial information supporting his claim.⁸ With regard to an individual’s or entity’s inability to pay claim, the Commission has determined that, in general, gross income or revenues are the best indicator of an ability to pay a forfeiture.⁹ Based on the financial documents provided by Mr. Tullias, we find sufficient basis to reduce the forfeiture to \$3,800.¹⁰ However, we caution Mr. Tullias that a party’s inability to pay is only one factor in our forfeiture calculation analysis, and is not dispositive.¹¹ We have previously rejected inability to pay claims in cases of repeated intentional and malicious acts or otherwise egregious violations.¹² We therefore warn Mr. Tullias that we may impose significantly higher penalties regardless of his financial circumstances if the forfeiture imposed here does not serve as a sufficient deterrent or if future violations evidence a pattern of deliberate disregard for the Act and Rules.

5. Based on the record before us and in light of the applicable statutory factors, we conclude that Mr. Tullias willfully and repeatedly violated Section 301 of the Act by operating an unlicensed radio station on 107.9 MHz. We further find after consideration of the entire record, including Mr. Tullias’ *NAL Response* and supportive financial materials, that a reduction of the forfeiture amount to \$3,800 is appropriate based on his demonstrated inability to pay.

IV. ORDERING CLAUSES

6. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Act¹³ and Section 1.80 of the Rules,¹⁴ Jean Yves Tullias **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of three thousand eight hundred dollars (\$3,800) for willfully and repeatedly violating Section 301 of the Act.¹⁵

⁷ 47 U.S.C. § 503(b)(2)(E).

⁸ *NAL Response* at 1, Attachment.

⁹ See *Coleman Enterprises, Inc., D/B/A Local Long Distance, Inc.*, Order of Forfeiture, 15 FCC Rcd 24385, 24389, para. 11 (2000) (*Local Long Distance Forfeiture Order*) (forfeiture not deemed excessive where it represented approximately 7.9 percent of the violator’s gross revenues); see also *Tommie Salter*, Forfeiture Order, 30 FCC Rcd 1041, 1042, n.11 (EB 2015) (*Salter Forfeiture Order*) (following *Local Long Distance Forfeiture Order*).

¹⁰ This forfeiture amount falls within the percentage range that the Commission previously found acceptable. See *Local Long Distance Forfeiture Order*, 15 FCC Rcd at 24389, para. 11; *Salter Forfeiture Order*, 30 FCC Rcd at 1042 n.11. If Mr. Tullias finds it financially infeasible to make full payment of this amount within 30 days, he can request an installment plan as described in this Forfeiture Order below.

¹¹ See 47 U.S.C. § 503(b)(2)(E).

¹² See, e.g., *TV Max, Inc., et al.*, Forfeiture Order, 29 FCC Rcd 8648, 8661, para. 25 (2014) (noting that the Commission “has previously rejected inability to pay claims in cases of repeated or otherwise egregious violations”); *Kevin W. Bondy*, Forfeiture Order, 26 FCC Rcd 7840 (EB 2011) (holding that violator’s repeated acts of malicious and intentional interference outweighed evidence concerning his ability to pay), *aff’d*, Memorandum Opinion and Order, 28 FCC Rcd 1170 (EB 2013), *aff’d*, Memorandum Opinion and Order, 28 FCC Rcd 16815 (EB 2013); *Whisler Fleurinor*, Forfeiture Order, 28 FCC Rcd 1087, 1090, para. 9 (EB 2013) (violator’s demonstrated inability to pay outweighed by gravity of multiple intentional violations).

¹³ 47 U.S.C. § 503(b).

¹⁴ 47 CFR § 1.80.

¹⁵ 47 U.S.C. § 301.

7. 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.¹⁶ 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.¹⁷

8. 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. Jean Yves Tullias shall send electronic notification of payment to Matthew L. Gibson at matthew.gibson@fcc.gov, with a copy to field@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.¹⁸ 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.

9. 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 20554.¹⁹ 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.

¹⁶ 47 CFR § 1.80.

¹⁷ 47 U.S.C. § 504(a).

¹⁸ An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

¹⁹ See 47 CFR § 1.1914.

10. **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 Jean Yves Tullias at his address of record and to Warren D. Levy, counsel for Jean Yves Tullias, Kasuri & Levy, LLC, 340 U.S. Highway 1 North, Bldg. #2, Edison, New Jersey 08817.

FEDERAL COMMUNICATIONS COMMISSION

David C. Dombrowski
Regional Director
Region One
Enforcement Bureau