

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

In the Matter of)	
)	File No.: EB-FIELDNER-15-00019211
Winston Tulloch,)	NAL/Acct No.: 201832010001
Paterson, New Jersey)	FRN: 0015762370
)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: April 24, 2018

Released: April 25, 2018

By the Regional Director, Region One, Enforcement Bureau:

I. INTRODUCTION

1. We propose a penalty of \$25,000 against Winston Tulloch for operating an unlicensed radio station on 90.9 MHz in Paterson, New Jersey. As discussed in greater detail below, the Commission has repeatedly warned Mr. Tulloch that operation of this unlicensed station was illegal and that continued operation could result in further enforcement action.¹ Mr. Tulloch’s apparent deliberate disregard of the Commission’s warning warrants a significant penalty. Operating an unlicensed, or pirate, radio station is illegal under the Communications Act of 1934, as amended (Act). Such stations undermine the Commission’s primary mission to manage radio spectrum. Such illegal operations can interfere with licensed communications, including authorized broadcasts and communications by public safety entities. Moreover, such illegal operations pose a danger to the public because they interfere with licensed stations that inform their listeners of important public safety messages, including Emergency Alert System (EAS) transmissions that provide vital information regarding weather and other dangers to the public. Accordingly, Commission action in this area is essential.

II. BACKGROUND

2. On February 18, 2015, the Commission received a complaint from a consumer that several unauthorized radio stations were operating in Paterson, New Jersey. The complainant also transmitted a news article regarding unauthorized radio operations in Paterson.² On May 18, 2015, two agents from the Enforcement Bureau’s (Bureau) New York Field Office (New York Office) began investigating the complaint and observed what appeared to be an unauthorized broadcast station operating on 90.9 MHz in Paterson, New Jersey. Using direction-finding techniques, the agents determined that the source of the signal of the unauthorized station was located in a multi-family dwelling on East 30th Street, Paterson, New Jersey (30th Street Site). The agents observed and photographed an FM broadcast antenna located on the building’s roof. The agents measured the strength of the station’s signal and determined that the transmissions on 90.9 MHz exceeded the limits for operation under Part 15 of the Commission’s rules, and therefore required a license from the Commission.³ The agents then consulted the

¹ See *infra*, paras. 6 – 8.

² Juanita Adames, *Paterson Council Controversy Shines Spotlight on Local Spanish Radio Stations*, (Feb. 9, 2015, 4:32pm), <http://www.northjersey.com/news/paterson-council-controversy-sh> (on file in EB-FIELDNER-15-00019211).

³ Section 15.239 of the Commission’s 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 microvolts per meter (“µV/m”) at three

(continued...)

Commission's records and confirmed that the Commission had not authorized an FM broadcast station to operate at or near the 30th Street Site.

3. On October 27, 2015, January 20, 2016, and April 20, 2016, agents returned to the 30th Street Site and, using direction-finding techniques, determined that a station continued to operate on 90.9 MHz from that location. On each occasion, the agents observed an FM antenna mounted on the building's roof and took digital photographs of the FM antenna. On each occasion, the agents recorded a portion of the station's transmissions, during which the announcer stated parties wishing to advertise on the station should call "Charles at Rewind Media Group" at a specific telephone number, for which agents subsequently determined that Winston Tulloch was the account holder. The agents then measured the strength of the station's signal and determined that the transmissions on 90.9 MHz exceeded the limits for operation under Part 15 of the Commission's rules and therefore required a license from the Commission.⁴ On each date, the agents confirmed that a license had not been issued to operate an FM broadcast station on 90.9 MHz at or near the 30th Street Site. In connection with the October 27, 2015, observation, the agents photographed the license plate of a vehicle parked at the 30th Street Site. On November 4, 2015, the agents searched vehicle registration databases and determined that the vehicle observed at the 30th Street Site was registered to Winston Tulloch, of Paterson, New Jersey.

4. On October 25, 2016, an agent returned to the 30th Street Site to determine whether the unauthorized station continued to operate from that location. Using direction-finding techniques, the agent confirmed the presence of a broadcast station operating on the frequency 90.9 MHz in the general vicinity but ultimately determined that the source of the station's signal had moved to a multi-family dwelling located on East 26th Street, Paterson, New Jersey (26th Street Site). The 26th Street Site was also the billing address for Mr. Tulloch's telephone number, which was announced on the air as the telephone number for the station on October 27, 2015, January 20, 2016, and April 20, 2016. The agent observed that an FM antenna was mounted on the roof of 26th Street Site's roof and that the vehicle, previously determined to be registered to Winston Tulloch, was parked at the 26th Street Site. The agent recorded a portion of the station's transmissions, during which the announcer stated parties wishing to advertise on the station should call "Charles at Rewind Media Group" at Mr. Tulloch's telephone number (previously announced on the station on October 27, 2015, January 20, 2016, and April 20, 2016). The agent then measured the strength of the station's signal and determined that the transmissions on 90.9 MHz exceeded the limits for operation under Part 15 of the Commission's rules and therefore required a license from the Commission.⁵ The agent confirmed that a license had not been issued to operate an FM broadcast station on 90.9 MHz at or near the 26th Street Site.

5. Also on October, 25, 2016, the agent issued a Notice of Unlicensed Radio Operation (an On-Scene NOUO) to Mr. Tulloch relating to the unlicensed operations that the agent observed that day.⁶ The October 25, 2016, On-Scene NOUO, which the agent posted on the exterior door to the 26th Street Site, advised Mr. Tulloch that an unlicensed station was illegally operating on 90.9 MHz from the 26th Street Site and warned that continued unlicensed operations could result in additional enforcement action. On November 29, 2016, the New York Office mailed Mr. Tulloch a Notice of Unlicensed Operation (a NOUO) relating to the unlicensed operations that the agent observed on October 25, 2016.⁷

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meters. 47 CFR § 15.239(b). Measurements showed that the field strength of the station's signal exceeded the permissible level for a non-licensed Part 15 transmitter.

⁴ 47 CFR § 15.239(b).

⁵ *Id.*

⁶ *Winston Tulloch*, Notice of Unlicensed Radio Operation (New York Office, Oct. 25, 2016).

⁷ *Winston Tulloch*, Notice of Unlicensed Operation (New York Office, Nov. 29, 2016), <http://transition.fcc.gov/eb/FieldNotices/2003/DOC-342598A1.html>.

6. On May 2, 2017, an agent returned to the 26th Street Site to determine whether an unlicensed FM broadcast station continued to operate from that location. Using direction-finding techniques, the agent confirmed the presence of a broadcast station operating on the frequency 90.9 MHz in the general vicinity but ultimately determined that the station's signal had returned to the 30th Street Site. Upon arriving at the 30th Street Site, the agent observed that an FM broadcast antenna was once again present on the building's roof and that Mr. Tulloch's vehicle was parked in the driveway. The agent recorded a portion of the station's transmissions, during which the announcer stated parties wishing to advertise on the station should call "Charles at Rewind Media Group" at Mr. Tulloch's telephone number (previously announced on October 27, 2015, January 20, 2016, April 20, 2016, and October 25, 2016). The agent then measured the strength of the station's signal and determined that the transmissions on 90.9 MHz exceeded the limits for operation under Part 15 of the Commission's rules and therefore required a license from the Commission.⁸ The agent confirmed that a license had not been issued to operate an FM broadcast station on 90.9 MHz at or near the 30th Street Site.

7. On June 8, 2017, the Columbia Regional Office (Columbia Office) mailed Mr. Tulloch a NOUO advising him that on May 2, 2017, an agent observed an unlicensed station was illegally operating on 90.9 MHz from the 30th Street Site and warning that continued unlicensed operations could result in additional enforcement action.⁹

8. On June 12, 2017, two agents returned to the 30th Street Site and, using direction-finding techniques, determined that a station continued to operate on 90.9 MHz from that location. The agents again observed an FM antenna on the building's roof and took digital photographs of the antenna. The agents recorded a portion of the station's transmissions, during which the announcer stated parties wishing to advertise on the station should call "Charles at Rewind Media Group" at Mr. Tulloch's telephone number (previously announced on October 27, 2015, January 20, 2016, April 20, 2016, October 25, 2016, and May 2, 2017). The agents then measured the strength of the station's signal and determined that the transmissions on 90.9 MHz exceeded the limits for operation under Part 15 of the Commission's rules and therefore required a license from the Commission.¹⁰ The agents confirmed that a license had not been issued to operate an FM broadcast station on 90.9 MHz at or near the 30th Street Site.

9. The agents issued an On-Scene NOUO to Mr. Tulloch relating to the unlicensed operations the agents observed that day.¹¹ The June 12, 2017, On-Scene NOUO, which the agents posted on the exterior door of the 30th Street Site, advised Mr. Tulloch that an unlicensed station was illegally operating on 90.9 MHz from the 30th Street Site and warned that continued unlicensed operations could result in additional enforcement action. On June 30, 2017, the Columbia Office mailed a NOUO to Winston Tulloch relating to the unlicensed operations that the agents observed on June 12, 2017.¹²

10. On September 15, 2017, two agents returned to the 30th Street Site and determined that the station on 90.9 MHz in Paterson, New Jersey was no longer in operation.

⁸ 47 CFR § 15.239(b).

⁹ *Winston Tulloch*, Notice of Unlicensed Operation (Columbia Office, June 8, 2017), <http://transition.fcc.gov/eb/Orders/2017/DOC-345340A1.html>.

¹⁰ 47 CFR § 15.239(b).

¹¹ *Winston Tulloch*, Notice of Unlicensed Radio Operation (New York Office, June 12, 2017).

¹² *Winston Tulloch*, Notice of Unlicensed Operation (Columbia Office, June 30, 2017), <http://transition.fcc.gov/eb/Orders/2017/DOC-345661A1.html>; see also, *Phillip Mahoney*, Notice of Unlicensed Operation (Columbia Office, June 30, 2017), <http://transition.fcc.gov/eb/Orders/2017/DOC-345662A1.html>. Mr. Mahoney owns the 30th Street Site.

III. DISCUSSION

11. We find that Mr. Tulloch apparently willfully and repeatedly violated Section 301 of the 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.¹³ As stated above, over the past year, agents have twice observed Mr. Tulloch's unlicensed station operating at the 30th Street Site (May 2, 2017 and June 12, 2017) and have issued written warnings after each observation. In combination with Mr. Tulloch's prior operation of an unlicensed radio station, this course of conduct demonstrates Mr. Tulloch's continued awareness that his operation of an unlicensed FM station on 90.9 MHz in Paterson, New Jersey, violates Section 301 of the Act.

12. 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."¹⁴ Here, Section 503(b)(2)(D) of the Act authorizes us to assess a forfeiture of up to \$19,639 for each day of a continuing violation, up to a statutory maximum of \$147,290 for a single act or failure to act.¹⁵ 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."¹⁶ 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.¹⁷ 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.¹⁸ 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.¹⁹

13. Through its investigation as discussed above, the Bureau has determined that Mr. Tulloch operated an unlicensed FM station on 90.9 MHz at the 30th Street Site on May 2, 2017, and June 12, 2017, both in apparent violation of Section 301 of the Act.²⁰ In light of these apparent findings, we propose a base forfeiture of \$10,000 for each apparent violation of Section 301 of the Act, resulting in an aggregate base forfeiture of \$20,000. We have discretion, however, to depart from these guidelines,

¹³ 47 U.S.C. § 301.

¹⁴ 47 U.S.C. § 503(b).

¹⁵ See 47 U.S.C. § 503(b)(2)(D); 47 CFR §§ 1.80(b)(7), (9); see also *Jay Peralta, Corona, New York*, Notice of Apparent Liability for Forfeiture, 32 FCC Rcd 3246, 3250 n.30 (2017) (Peralta NAL) (discussing inflation adjustments to the forfeitures specified in Section 503(b)(2)(D)); *Amendment of Section 1.80(b) of the Commission's Rules Adjustment of Civil Monetary Penalties to Reflect Inflation*, Order, DA 18-12, at https://apps.fcc.gov/edocs_public/attachmatch/DA-18-12A1.pdf (EB 2018).

¹⁶ 47 U.S.C. § 503(b)(2)(E).

¹⁷ 47 CFR § 1.80(b)(8), Note § II (articulating criteria for upward adjustments (egregious misconduct, ability to pay/relative disincentive, intentional violation, substantial harm, prior violations of any FCC requirements, substantial economic gain, and repeated or continuous violation) and downward adjustments (minor violation, good faith or voluntary disclosure, history of overall compliance, and inability to pay)).

¹⁸ *Id.*

¹⁹ 47 CFR § 1.80(b).

²⁰ As discussed in paragraphs 2 – 5, agents observed the station operating multiple times over a three-year period. Because the prior observations fall outside of the one-year period specified in Section 503(b)(6)(B) of the Act, the proposed monetary forfeiture is based solely on the two observed apparent violations of the Act observed in the year prior to the date of this Notice of Apparent Liability for Forfeiture. See 47 U.S.C. § 503(b)(6)(B).

taking into account the particular facts of each individual case.²¹ Given the totality of the circumstances, and consistent with the *Forfeiture Policy Statement*, we conclude that an upward adjustment is warranted. Although the Bureau issued numerous written warnings to Mr. Tulloch, instructing him to cease operating his unlicensed FM broadcast station, he did not discontinue operations. Instead, Mr. Tulloch continued to operate his illegal station. We therefore propose an upward adjustment of \$5,000 based on the repeated and intentional nature of Mr. Tulloch's apparent violations of Section 301 of the Act. In applying the applicable statutory factors, we also consider whether there is any basis for a downward adjustment of the proposed forfeiture. Here, we find none. After applying the *Forfeiture Policy Statement*, Section 1.80 of the Rules, and the statutory factors, we therefore propose a total monetary forfeiture of \$25,000 for which Mr. Tulloch is apparently liable.

IV. CONCLUSION

14. We have determined that Mr. Tulloch apparently willfully and repeatedly operated an unlicensed pirate radio station in violation of Section 301 of the Act. As such, Mr. Tulloch is apparently liable for a forfeiture of \$25,000.

V. ORDERING CLAUSES

15. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Act²² and Sections 1.80 of the Rules,²³ Winston Tulloch is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of Twenty-Five Thousand Dollars (\$25,000) for willful and repeated violations of Section 301 of the Act.²⁴

16. **IT IS FURTHER ORDERED** that, pursuant to Section 1.80 of the Rules,²⁵ within thirty (30) calendar days of the release date of this Notice of Apparent Liability for Forfeiture, Winston Tulloch **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 19 below.

17. 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. Winston Tulloch shall send electronic notification of payment to Matthew L. Gibson at matthew.gibson@fcc.gov, with 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.²⁶ 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

²¹ *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).

²² 47 U.S.C. § 503(b).

²³ 47 CFR § 1.80.

²⁴ 47 U.S.C. § 301.

²⁵ 47 CFR § 1.80.

²⁶ An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

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. 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 20554.²⁷ 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.

19. 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.²⁸ 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 Matthew L. Gibson at matthew.gibson@fcc.gov, with a copy to field@fcc.gov.

20. 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.

21. **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 Winston Tulloch at his address of record.

FEDERAL COMMUNICATIONS COMMISSION

David Dombrowski
Regional Director, Region One
Enforcement Bureau

²⁷ See 47 CFR § 1.1914.

²⁸ 47 CFR §§ 1.16, 1.80(f)(3).