

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

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| In the Matter of |) | |
| |) | |
| Sergio Plasencia |) | File No.: EB-FIELDSCR-17-00023640 ¹ |
| |) | NAL/Acct. No.: 201732600003 |
| Miami, Florida |) | FRN: 0017022294 |
| |) | |
| |) | |

ORDER

Adopted: October 3, 2018

Released: October 3, 2018

By the Chief, Enforcement Bureau:

1. The Enforcement Bureau (Bureau) of the Federal Communications Commission (Commission) has entered into a Consent Decree to resolve its investigation into whether Sergio Plasencia (Mr. Plasencia) operated an unauthorized radio station on 101.9 and 107.3 MHz in Miami, Florida. Unlicensed radio stations create a danger of interference to licensed communications, including other broadcasters, aviation, and public safety frequencies. Such operations also undermine the Commission's authority over broadcast radio operations. Moreover, unlicensed radio stations do not broadcast Emergency Alert Service messages and thereby create a public safety hazard for their listeners. To settle this matter, Mr. Plasencia admits that he operated an unauthorized radio station, will not operate an unauthorized radio station in the future, and will pay a \$2,680 civil penalty. However, Mr. Plasencia will pay an additional civil penalty of \$17,320 if the Commission finds that he operates an unauthorized radio station during the next twenty years or that he misled the Commission regarding his current financial status.

2. After reviewing the terms of the Consent Decree and evaluating the facts before us, we find that the public interest would be served by adopting the Consent Decree and resolving the Notice of Apparent Liability for Forfeiture regarding Mr. Plasencia's compliance with operating an unauthorized radio station in violation of Section 301 of the Communications Act of 1934, as amended (Act).²

3. In the absence of material new evidence relating to this matter, we do not set for hearing the question of Mr. Plasencia's basic qualifications to hold or obtain any Commission license or authorization.³

4. Accordingly, **IT IS ORDERED** that, pursuant to Sections 4(i), and 503(b) of the Act⁴ and the authority delegated by Sections 0.111 and 0.311 of the Commission's rules,⁵ the attached Consent Decree **IS ADOPTED** and its terms incorporated by reference.

¹ The investigation began under File No. EB-FIELDSCR-16-00021267. Any future correspondence with the Commission concerning this matter should reflect the new case number reference in the caption, above.

² 47 U.S.C. § 301.

³ See 47 CFR § 1.93(b).

⁴ 47 U.S.C. §§ 154(i), 503(b).

⁵ 47 CFR §§ 0.111, 0.311.

5. **IT IS FURTHER ORDERED** that the above-captioned matter **IS TERMINATED** and the NAL **IS CANCELED**.

6. **IT IS FURTHER ORDERED** that a copy of this Order and Consent Decree shall be sent by first class mail and certified mail, return receipt requested, to Mr. Plasencia at his address of record, and to Jelani C. Davis, Esquire, 7951 S.W. Sixth Street, Suite 200, Plantation, FL 33324.

FEDERAL COMMUNICATIONS COMMISSION

Rosemary C. Harold
Chief
Enforcement Bureau

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CONSENT DECREE

1. The Enforcement Bureau of the Federal Communications Commission and Sergio Plasencia (Mr. Plasencia), by their authorized representatives, hereby enter into this Consent Decree for the purpose of terminating the Enforcement Bureau’s investigation into whether Mr. Plasencia violated Section 301 of the Communications Act of 1934, as amended, by operating an unauthorized radio station on 101.9 MHz and 107.3 MHz in Miami, Florida.

I. DEFINITIONS

2. For the purposes of this Consent Decree, the following definitions shall apply:
- (a) “Act” means the Communications Act of 1934, as amended.¹
 - (b) “Adopting Order” means an order of the Bureau adopting the terms of this Consent Decree without change, addition, deletion, or modification.
 - (c) “Bureau” means the Enforcement Bureau of the Federal Communications Commission.
 - (d) “Commission” and “FCC” mean the Federal Communications Commission and all of its bureaus and offices.
 - (e) “Compliance Commitment” means the compliance obligations described in this Consent Decree at paragraph 10.
 - (f) “Effective Date” means the date by which both the Bureau and Mr. Plasencia have signed the Consent Decree.
 - (g) “Investigation” means the investigation commenced by the Bureau in File No. EB-FIELDSCR-17-00023640 regarding whether Mr. Plasencia violated Section 301 of the Act by operating an unauthorized radio station which culminated in the issuance of the NAL.
 - (h) “NAL” means the Notice of Apparent Liability for Forfeiture and Order issued to Mr. Plasencia on April 27, 2017, proposing a \$20,000 forfeiture for apparent violations of Section 301 of the Act.²
 - (i) “Parties” means Mr. Plasencia and the Bureau, each of which is a “Party.”
 - (j) “TARGET” means Mr. Plasencia.

¹ 47 U.S.C. § 151 *et seq.*

² *Sergio Plasencia*, Notice of Apparent Liability for Forfeiture, 32 FCC Rcd 3186 (2017) (NAL).

II. BACKGROUND

3. 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]... except under and in accordance with this Act and with a license in that behalf granted under the provisions of this Act.”³ Unlicensed radio stations operate illegally, in violation of Section 301. Unlicensed radio stations undermine the Commission’s efforts to manage radio spectrum and can interfere with licensed communications, including authorized broadcasts and public safety transmissions. Moreover, unlicensed radio stations do not broadcast Emergency Alert Service messages, and so create a public safety hazard for their listeners.

4. Mr. Plasencia is an individual who operated an unauthorized radio station on two different frequencies in Miami, Florida: 101.9 MHz from a family member’s residence and 107.3 MHz from a property he owns. On April 27, 2017, the Commission issued an NAL proposing a \$20,000 penalty against Mr. Plasencia for apparently operating an unauthorized radio station in violation of Section 301 of the Act.⁴ In response to the NAL, Mr. Plasencia filed a request to reduce or cancel the proposed forfeiture and submitted three years of tax returns supporting his request based on an inability to pay the proposed forfeiture.⁵ Subsequently, Mr. Plasencia and the Bureau engaged in settlement negotiations. To settle this matter, the Bureau and Mr. Plasencia enter into this Consent Decree and agree to the following terms and conditions.

III. TERMS OF AGREEMENT

5. **Adopting Order.** The provisions of this Consent Decree shall be incorporated by the Bureau in an Adopting Order.

6. **Jurisdiction.** Mr. Plasencia agrees that the Bureau has jurisdiction over him and the matters contained in this Consent Decree and has the authority to enter into and adopt this Consent Decree.

7. **Effective Date; Violations.** The Parties agree that this Consent Decree shall become effective on the Effective Date as defined herein. As of the Effective Date, the Parties agree that this Consent Decree shall have the same force and effect as any other order of the Commission.

8. **Termination of Investigation.** In express reliance on the covenants and representations in this Consent Decree and to avoid further expenditure of public resources, the Bureau agrees to terminate the Investigation. In consideration for the termination of the Investigation, Mr. Plasencia agrees to the terms, conditions, and procedures contained herein. The Bureau further agrees that, in the absence of new material evidence, it will not use the facts developed in the Investigation through the Effective Date, or the existence of this Consent Decree, to institute, on its own motion, any new proceeding, formal or informal, or take any action on its own motion against Mr. Plasencia concerning the matters that were the subject of the Investigation. The Bureau also agrees that, in the absence of new material evidence, it will not use the facts developed in the Investigation through the Effective Date, or the existence of this Consent Decree, to institute on its own motion any proceeding, formal or informal, or to set for hearing the question of Mr. Plasencia’s basic qualifications to be a Commission licensee or hold Commission licenses or authorizations.⁶

³ 47 U.S.C. § 301.

⁴ NAL, 32 FCC Rcd at 3188, para. 8. The NAL includes a more complete recitation of the facts and history of this case and is incorporated herein by reference.

⁵ *Initial Response of Sergio Plasencia to Notice of Apparent Liability and Request for Consent Decree Negotiations*, filed May 24, 2017 (on file in EB-FIELDSCR-17-00023640).

⁶ See 47 CFR § 1.93(b).

9. **Admission of Liability.** Mr. Plasencia admits for the purpose of this Consent Decree and for Commission civil enforcement purposes, and in express reliance on the provisions of paragraph 8 herein, that his actions referenced in paragraph 4 herein and in the NAL violated Section 301 of the Act.

10. **Compliance Commitment.** Mr. Plasencia has ceased using or operating and in the future will not use, operate, or provide material assistance to another in the use or operation of, any unauthorized radio station. Any use, operation, or provision of material assistance to another in the use or operation of an unauthorized radio station by Mr. Plasencia will violate Section 301 of the Act and the terms of this Consent Decree. Mr. Plasencia will report any noncompliance with Section 301 of the Act or with the terms and conditions of this Consent Decree within fifteen (15) calendar days of such noncompliance to Field Director, Office of the Field Director, Enforcement Bureau, Federal Communications Commission, 445 12th Street, S.W., Washington, DC 20554, with a copy submitted electronically to Janet.Moran@fcc.gov and field@fcc.gov; any failure to report such noncompliance will violate the terms of this Consent Decree.

11. **Termination Date.** Unless stated otherwise, the requirements set forth in paragraph 10 (compliance commitment paragraph) of this Consent Decree shall expire twenty (20) years after the Effective Date.

12. **Civil Penalty.** In light of Mr. Plasencia's demonstrated inability to pay, and subject to the provisions of paragraph 13 below, Mr. Plasencia will pay a civil penalty to the United States Treasury in the amount of two thousand, six hundred eighty Dollars (\$2,680) (Civil Penalty). Mr. Plasencia acknowledges and agrees that upon execution of this Consent Decree, the Civil Penalty shall become a "Claim" or "Debt" as defined in Section 3701(b)(1) of the Debt Collection Improvement Act of 1996 (DCIA).⁷ The payment of the Civil Penalty shall be made within thirty (30) calendar days of the Effective Date. Mr. Plasencia shall send electronic notification of payment to Janet.Moran@fcc.gov and field@fcc.gov on the date the payment is made. The payment must be made by check or similar instrument, wire transfer, or credit card, and must include the NAL/Account Number and FRN referenced above. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted.⁸ When completing the FCC Form 159, enter the NAL/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.

⁷ Debt Collection Improvement Act of 1996, Pub. L. No. 104-134, 110 Stat. 1321, 1358 (Apr. 26, 1996) (DCIA).

⁸ An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

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

13. **Suspended Penalty.** Mr. Plasencia further agrees that, upon an Event of Default (as described below in paragraph 14), he will pay a further civil penalty to the United States Treasury in the amount of seventeen thousand, three hundred twenty Dollars (\$17,320) (Additional Civil Penalty). Mr. Plasencia acknowledges and agrees that upon an Event of Default, the Additional Civil Penalty shall also become a “Claim” or “Debt” as defined in Section 3701(b)(1) of the DCIA,⁹ and all procedures for collection of the Additional Civil Penalty may, at the Commission’s discretion, be initiated against Mr. Plasencia.

14. **Event of Default.** Mr. Plasencia agrees that an Event of Default shall occur upon (1) the failure to pay the Civil Penalty to the U.S. Treasury on or before the date specified in Paragraph 12; (2) the release of an order within three years of the Effective Date by the Commission, such as a Notice of Apparent Liability for Forfeiture that is uncontested or a Forfeiture Order, finding that Mr. Plasencia violated Section 301 of the Act; (3) an admission of non-compliance required by Paragraph 10; or (4) the release of an order by the Commission finding that Mr. Plasencia materially misstated his financial condition in the documents he produced to support his claim of inability to pay.

15. **Interest, Charges for Collection, and Acceleration of Maturity Date.** Upon an Event of Default, all procedures for collection permitted by the DCIA and other provisions of law¹⁰ may, at the Commission’s discretion, be initiated and the following shall become immediately due and payable, without notice, presentment, demand, protest, or notice of protest of any kind, all of which are waived by Mr. Plasencia: (a) any unpaid Civil Penalty referenced in Paragraph 12, which shall accrue interest at a rate of the U.S. Prime Rate in effect on the date of the Event of Default plus 4.75 percent per annum from the date of the Event of Default until payment in full; (b) the Additional Civil Penalty referenced in Paragraph 13, which shall accrue interest at a rate of the U.S. Prime Rate in effect on the date of the Event of Default plus 4.75 percent per annum from the date of the Event of Default until payment in full; (c) any penalties permitted and/or required by the law, including but not limited to 31 U.S.C. § 3717; and (d) any administrative charge(s), including the costs of collection, litigation, and attorneys’ fees.

16. **Waivers.** As of the Effective Date, Mr. Plasencia waives any and all rights he may have to seek administrative or judicial reconsideration, review, appeal or stay, or to otherwise challenge or contest the validity of this Consent Decree and the Adopting Order. Mr. Plasencia shall retain the right to challenge Commission interpretation of the Consent Decree or any terms contained herein. If either Party (or the United States on behalf of the Commission) brings a judicial action to enforce the terms of the Consent Decree or the Adopting Order, neither Mr. Plasencia nor the Commission shall contest the validity of the Consent Decree or the Adopting Order, and Mr. Plasencia shall waive any statutory right to a trial *de novo*. Mr. Plasencia hereby agrees to waive any claims he may otherwise have under the Equal Access to Justice Act¹¹ relating to the matters addressed in this Consent Decree.

17. **Severability.** The Parties agree that if any of the provisions of the Consent Decree shall be held unenforceable by any court of competent jurisdiction, such unenforceability shall not render unenforceable the entire Consent Decree, but rather the entire Consent Decree shall be construed as if not containing the particular unenforceable provision or provisions, and the rights and obligations of the Parties shall be construed and enforced accordingly.

18. **Invalidity.** In the event that this Consent Decree in its entirety is rendered invalid by any court of competent jurisdiction, it shall become null and void and may not be used in any manner in any legal proceeding.

⁹ *Id.*

¹⁰ See 31 CFR Part 900, *et seq.*

¹¹ See 5 U.S.C. § 504; 47 CFR §§ 1.1501–1.1530.

19. **Subsequent Rule or Order.** The Parties agree that if any provision of the Consent Decree conflicts with any subsequent Rule or Order adopted by the Commission (except an Order specifically intended to revise the terms of this Consent Decree to which Mr. Plasencia does not expressly consent) that provision will be superseded by such Rule or Order.

20. **Successors and Assigns.** Mr. Plasencia agrees that the provisions of this Consent Decree shall be binding on his successors and assigns.

21. **Final Settlement.** The Parties agree and acknowledge that this Consent Decree shall constitute a final settlement between the Parties with respect to the Investigation.

22. **Modifications.** This Consent Decree cannot be modified without the advance written consent of both Parties.

23. **Paragraph Headings.** The headings of the paragraphs in this Consent Decree are inserted for convenience only and are not intended to affect the meaning or interpretation of this Consent Decree.

24. **Authorized Representative.** Each Party represents and warrants to the other that it has full power and authority to enter into this Consent Decree. Each person signing this Consent Decree on behalf of a Party hereby represents that he or she is fully authorized by the Party to execute this Consent Decree and to bind the Party to its terms and conditions.

25. **Counterparts.** This Consent Decree may be signed in counterpart (including electronically or by facsimile). Each counterpart, when executed and delivered, shall be an original, and all of the counterparts together shall constitute one and the same fully executed instrument.

Rosemary C. Harold
Chief
Enforcement Bureau

Date

Sergio Plasencia

Date