

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

In the Matter of)
) File No.: EB-FIELDSCR-18-00027605
Gerald Sutton,)
Alma, Arkansas) NAL/Acct No.: 201932020005
) FRN: 0028746782
)

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: August 22, 2019

Released: August 22, 2019

By the Acting Field Director, Enforcement Bureau:

I. INTRODUCTION

1. Operating an unlicensed, or pirate, radio station is illegal under the Communications Act of 1934, as amended (Act). Pirate radio 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. Therefore, we propose a penalty of \$10,000 against Gerald Sutton for operating an unlicensed radio station on 103.1 MHz in Alma, Arkansas.¹

II. BACKGROUND

2. On August 17, 2018, the Commission received a complaint from a consumer that an unauthorized radio station was operating in Alma, Arkansas. On October 18, 2018, an Agent from the Enforcement Bureau’s (Bureau) New Orleans Field Office (New Orleans Office) began investigating the complaint and observed what appeared to be an unauthorized broadcast station operating on 103.1 MHz in Alma, Arkansas. Using direction-finding techniques, the Agent determined that the source of the signal of the unauthorized station was located at 725 Fayetteville Avenue Alma, AR (Fayetteville Avenue Site). The Agent measured the strength of the station’s signal and determined that the transmissions on 103.1 MHz exceeded the limits for operation under part 15 of the Commission’s rules, and therefore required a license from the Commission.² The Agent then consulted the Commission’s records and confirmed that the Commission had not authorized an FM broadcast station to operate at or near the Fayetteville Avenue Site. The Agent identified Gerald Sutton as the operator of the station. When the Agent attempted to inspect the Fayetteville Avenue Site, Mr. Sutton refused inspection, but the transmitter was turned off minutes after the agent’s arrival at the site. After the agent departed the site, the Agent observed that the transmitter was turned back on.

¹ Any entity that is a “Small Business Concern” as defined in the Small Business Act (Pub. L. 85-536, as amended) may avail itself of rights set forth in that Act, including rights set forth in 15 U.S.C. § 657, “Oversight of Regulatory Enforcement,” in addition to other rights set forth herein.

² 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 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.

3. On November 13, 2018, the Atlanta Regional Office mailed Mr. Sutton a Notice of Unlicensed Operation relating to the unlicensed operation that the Agent observed on October 18, 2018.³ The NOUO stated that a Commission Agent has determined that an FM station on 103.1 MHz was operating from a business/residence on Alma Avenue in Fayetteville, Arkansas and that no license had been issued by the Commission to operate at that location.⁴ It also stated that the operation of this station was in violation of section 301 of the Act and part 15 of the Commission's rules and must discontinue immediately.⁵ On December 31, 2018, the Commission received a response from Mr. Sutton who stated that the Act did not apply to him.⁶

III. DISCUSSION

4. We find that Gerald Sutton apparently willfully violated section 301 of the Act. Section 301 of the Act states that “[n]o 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.⁷ An Agent observed Mr. Sutton's unlicensed station operating at the Fayetteville Avenue Site on October 18, 2018. The Agent also took field strength measurements on that date. The Agent determined that the transmissions from the Fayetteville Avenue Site on 103.1 MHz exceeded the limits for operation under part 15 of the Commission's rules and therefore required a license from the Commission.⁸ Thus, Mr. Sutton violated section 301 of the Act on that date.

5. Section 503(b) of the Act authorizes the Commission to impose a forfeiture against any person 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.”⁹ Here, section 503(b)(2)(D) of the Act authorizes us to assess a forfeiture of up to \$20,134 for each day of a continuing violation, up to a statutory maximum of \$151,005 for a single act or failure to act.¹⁰ 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.”¹¹ 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.¹² 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.¹³

6. Through its investigation, the Bureau has determined that Mr. Sutton operated an unlicensed station on 103.1 MHz on October 18, 2018. In light of these apparent findings, we propose a

³ *Gerald Sutton*, Notice of Unlicensed Operation (Atlanta Regional Office, Nov. 13, 2018), <https://transition.fcc.gov/eb/Orders/2018/DOC-355075A1.html> (NOUO). UPS confirmed delivery of the NOUO on Nov. 15, 2018.

⁴ *See generally* NOUO.

⁵ *See id.*

⁶ *See* Letter from Gerald Sutton at 2 (received Dec. 31, 2018).

⁷ 47 U.S.C. § 301.

⁸ 47 CFR §§, 15.209(a), 15.223(a), 15.239(b).

⁹ 47 U.S.C. § 503(b).

¹⁰ *See* 47 U.S.C. § 503(b)(2)(D); 47 CFR §§ 1.80(b)(7), (9); *Amendment of Section 1.80(b) of the Commission's Rules, Adjustment of Civil Monetary Penalties to Reflect Inflation*, Order, 33 FCC Rcd 12278 (EB 2018).

¹¹ 47 U.S.C. § 503(b)(2)(E).

¹² 47 CFR § 1.80(b)(8), Note to paragraph (b)(8).

¹³ *Id.*

base forfeiture of \$10,000 for each apparent violation of section 301 of the Act, resulting in an aggregate base forfeiture of \$10,000. We have discretion, however, to depart from these guidelines, taking into account the particular facts of each individual case.¹⁴ Given the totality of the circumstances, and consistent with the *Forfeiture Policy Statement*, we conclude that no upward adjustment is warranted. 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 Commission's rules, and the statutory factors, we therefore propose a total monetary forfeiture of \$10,000 for which Mr. Sutton is apparently liable.

IV. CONCLUSION

7. We have determined that Mr. Sutton apparently willfully operated an unlicensed pirate radio station in violation of section 301 of the Act. As such, Mr. Sutton is apparently liable for a forfeiture of \$10,000.

V. ORDERING CLAUSES

8. Accordingly, **IT IS ORDERED** that, pursuant to section 503(b) of the Act¹⁵ and section 1.80 of the Commission's rules,¹⁶ Gerald Sutton is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of Ten Thousand Dollars (\$10,000) for willful violation of section 301 of the Act.¹⁷

9. **IT IS FURTHER ORDERED** that, pursuant to section 1.80 of the Commission's rules,¹⁸ within thirty (30) calendar days of the release date of this Notice of Apparent Liability for Forfeiture, Gerald Sutton **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.

10. Gerald Sutton shall send electronic notification of payment to Ronald Ramage, Enforcement Bureau, Federal Communications Commission, at field@fcc.gov on the date said payment is made. Payment of the forfeiture must be made by credit card, ACH (Automated Clearing House) debit from a bank account using the Commission's Fee Filer (the Commission's online payment system),¹⁹ or by wire transfer. The Commission no longer accepts forfeiture payments by check or money order. Below are instructions that payors should follow based on the form of payment selected:²⁰

- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. A completed Form 159 must be faxed to the Federal Communications Commission at 202-418-2843 or e-mailed to RROGWireFaxes@fcc.gov on the same business day the wire transfer is initiated. Failure to

¹⁴ *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).

¹⁵ 47 U.S.C. § 503(b).

¹⁶ 47 CFR § 1.80.

¹⁷ 47 U.S.C. § 301.

¹⁸ 47 CFR § 1.80.

¹⁹ Payments made using the Commission's Fee Filer system do not require the submission of an FCC Form 159.

²⁰ For questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone at 1-877-480-3201 (option #6), or by e-mail at ARINQUIRIES@fcc.gov.

provide all required information in Form 159 may result in payment not being recognized as having been received. When completing FCC Form 159, enter the Account Number in block number 23A (call sign/other ID), enter the letters “FORF” in block number 24A (payment type code), and enter in block number 11 the FRN(s) captioned above (Payor FRN).²¹ For additional detail and wire transfer instructions, go to <https://www.fcc.gov/licensing-databases/fees/wire-transfer>.

- Payment by credit card must be made by using the Commission’s Fee Filer website at <https://apps.fcc.gov/FeeFiler/login.cfm>. To pay by credit card, log-in using the FRN captioned above. If payment must be split across FRNs, complete this process for each FRN. Next, select “Pay bills” on the Fee Filer Menu, and select the bill number associated with the NAL Account – the bill number is the NAL Account number with the first two digits excluded – and then choose the “Pay by Credit Card” option. Please note that there is a \$24,999.99 limit on credit card transactions.
- Payment by ACH must be made by using the Commission’s Fee Filer website at <https://apps.fcc.gov/FeeFiler/login.cfm>. To pay by ACH, log in using the FRN captioned above. If payment must be split across FRNs, complete this process for each FRN. Next, select “Pay bills” on the Fee Filer Menu and then select the bill number associated to the NAL Account – the bill number is the NAL Account number with the first two digits excluded – and choose the “Pay from Bank Account” option. Please contact the appropriate financial institution to confirm the correct Routing Number and the correct account number from which payment will be made and verify with that financial institution that the designated account has authorization to accept ACH transactions.

11. 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 20554.²² 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.

12. 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 Commission’s rules.²³ 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 field@fcc.gov.

13. 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 Instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

²² See 47 CFR § 1.1914.

²³ 47 CFR §§ 1.16, 1.80(f)(3).

14. **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 Gerald Sutton at his address of record.

FEDERAL COMMUNICATIONS COMMISSION

Ronald Ramage
Acting Field Director
Enforcement Bureau