

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

In the Matter of

Lawrence Scott Gallagher
Braintree, MA

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NAL/Acct. No.: 115BS0017

MEMORANDUM OPINION AND ORDER

Adopted: May 28 1997

Released: May 30, 1997

By The Compliance and Information Bureau:

I. INTRODUCTION

1. In this Order, we address the Notice of Forfeiture (NOF) for \$250 issued to Lawrence Scott Gallagher (Gallagher) on September 12, 1991, by the Compliance and Information Bureau,¹ of the Federal Communications Commission. The forfeiture was issued under authority of Section 503(b) of the Communications Act of 1934, as amended (Act), 47 U.S.C. §503(b), for willfully violating Section 301 of the Act, 47 U.S.C. §301. We have evaluated all of the circumstances in this case and conclude that a forfeiture in the amount of \$250 is warranted.

II. BACKGROUND

2. On April 16, 1991, at the Compliance and Information Bureau's Boston Field Office, an agent intercepted transmissions on 102.1 MHz. The operator used the call letters WHDL on the air. The agents traced the signal to the rear of 1509 Liberty Street, Braintree, Massachusetts, a private home. Mr. Gallagher greeted the FCC agents at 1509 Liberty Street and acknowledged that the WHDL transmitter and studio were upstairs. Mr. Gallagher then invited the agents upstairs to see the studio, and admitted that he was the operator and owner of the unlicensed station. The agents ascertained that the station consisted of a home made stereo exciter feeding an amplifier rated at 100 watts, which Mr. Gallagher bought from a radio station in California. Output of the amplifier was measured at 35 watts feeding 1/2 heliax to an antenna in a pine tree

¹The Compliance and Information Bureau (CIB) was formerly named the Field Operations Bureau. The name change became effective on November 27, 1994.

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in the backyard. Mr. Gallagher stated that the station had been intermittently active for the preceding two years. A station operating at this frequency and power requires an FCC license. Mr. Gallagher, however, was unable to produce any authorization for the station. He informed the agents that his roommate, Mr. Scott Lovett, also assisted him in the operation of the station. The FCC agents shut down the station.

3. On April 25, 1991, the Boston Field Office issued a Notice of Apparent Liability (NAL) to Mr. Gallagher which proposed a monetary forfeiture in the amount of \$750. Mr. Gallagher responded to the NAL by letter dated May 29, 1991. He admitted to the violation, but requested mitigation of the forfeiture amount.² On review of the information provided in response to the NAL, the Boston Field Office concluded that Mr. Gallagher had violated Section 301 of the Communications Act and that the violation was willful. However, the Boston Field Office agreed to a reduction of the forfeiture amount. Accordingly, the Boston Field Office adjusted the forfeiture to \$250 and issued an NOF to Gallagher on September 12, 1991, for that amount. On December 27, 1992, Mr. Gallagher wrote a letter to the Commission stating that he "shall not surrender a monetary forfeiture of any kind without a proper hearing."

III. DISCUSSION

4. Initially, we note that, the NOF followed the Commission's forfeiture guidelines that were vacated by the court in United States Telephone Assn v. FCC, 28 F.3d 1232 (D.C.Cir. 1994). In light of the court's decision, we are assessing the forfeiture amount pursuant to the guidelines of Section 503 of the Act, 47 U.S.C. §503. In assessing forfeitures, Section 503 of the Act requires that the Commission 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 offenses, ability to pay, and such other matters as justice may require. 47 U.S.C. §503(b)(2)(D).

5. Lawrence Scott Gallagher admitted to the unlicensed operation.. As the NAL indicated, Lawrence Scott Gallagher was not licensed by the Commission to transmit on 102.1 MHz. The violation is willful³ because WHDL(FM) was operated without a license from the Commission. Accordingly, upon consideration of all factors in this case, and in light of Section 503 of the Act, we find that the forfeiture amount of \$250 is warranted.

IV. ORDERING CLAUSES

6. **IT IS ORDERED**, pursuant to Sections 503(b) and 504(b) of the Act, 47 U.S.C. §503(b),

²We note that Mr. Gallagher voluntarily offered to surrender his equipment. To date, the equipment has not been surrendered to the Boston Field Office.

³Willful is defined as the conscious and deliberate commission or omission of an act that violates a Commission requirement. For a violation to be willful, it is not required that the violator also intended to violate a requirement of the Commission or be aware that it is committing a violation. 47 U.S.C. §312(f)(1). See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

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§504(b), that Lawrence Scott Gallagher **IS LIABLE FOR MONETARY FORFEITURE** in the amount of \$250 for willful violation of Section 301 of the Act, 47 U.S.C. §301. The amount specified was determined after consideration of the factors set forth in Section 503(b) of the Communications Act.

7. **IT IS FURTHER ORDERED**, pursuant to Sections 1.80(f)(3) and (h) of the Commission's Rules, 47 C.F.R. §§1.80(f)(3) and (h), that Lawrence Scott Gallagher must pay the full amount of the monetary forfeiture amount of two hundred and fifty dollars (\$250) within thirty (30) days of the date of release of this Order. Forfeitures shall be paid by check, money order, or credit card drawn on a United States financial institution payable to the Federal Communications Commission.⁴ Forfeiture penalties not paid within 30 days may be referred to the U.S. Attorney for recovery in a civil suit. 47 U.S.C. §504(a). Please place NAL/Acct. No. 115BS0017 on the remittance and mail it to:

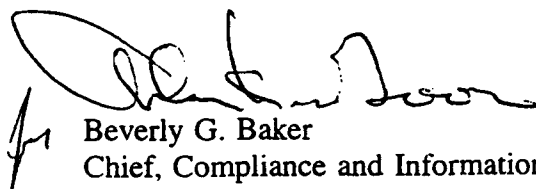
Federal Communications Commission
Post Office Box 73482
Chicago, Illinois 60673-7482

8. Any application for review of this decision may be filed within 30 days from the release date of this Order in accordance with Section 1.115 of the Commission's Rules, 47 C.F.R. §§1.115, and mailed to:

Federal Communications Commission
Legal Services Group, Compliance Division, CIB
Attention: Mail Stop Code 1500-E/MSL
1919 M Street, N.W.
Washington, DC 20554

9. **IT IS FURTHER ORDERED** that a copy of this Order shall be sent by certified mail, return receipt requested, to Lawrence Scott Gallagher.

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Beverly G. Baker
Chief, Compliance and Information Bureau

⁴Requests for installment plans should be mailed to: Chief, Billings and Collections, Mail Stop 1110A2, 1919 M Street, N.W., Washington, D.C., 20554. Payment of the forfeiture in installments may be considered as a separate matter in accordance with Section 1.1914 of the Commission's Rules. Contact Chief, Billings and Collections at (202) 418-1995 for more information on payment by credit card.