

Federal Communications Commission

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

In the Matter of)	
)	
Joshie Yasin Nakamura, Sr.)	File Number No. 99SF646
a/k/a Marvin Eugene Barnes)	
800 Weeks St.)	NAL/Acct. No. 200132960002
East Palo Alto, CA 94301)	

1. NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: April 19, 2001

By the Enforcement Bureau, San Francisco Field Office:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture ("NAL"), we find that Joshie Yasin Nakamura, Sr. a/k/a Marvin Eugene Barnes has apparently violated Section 301 of the Communications Act of 1934 ("Act"), as amended¹, by operating an amateur radio station without a license issued by the Federal Communications Commission. We conclude that Joshie Yasin Nakamura, Sr. a/k/a Marvin Eugene Barnes is apparently liable for forfeiture in the amount of ten thousand dollars (\$10,000).

II. BACKGROUND

2. The Commission's San Francisco Field Office received several complaints between January 26 and March 2, 2000 from amateur radio licensees and the Amateur Radio Relay League (ARRL) Official Observer (OO). They asserted that a radio station was operating on several amateur frequencies, including 445.175 MHz, without proper authorization from the Commission from a residence in East Palo Alto, CA. In addition they asserted that the operator was causing interference by jamming and playing music.

3. On March 20, 2000, agents from the Commission's San Francisco Field Office observed unidentified radio transmissions on 445.175 MHz. The agents determined that the source of the transmissions was located at 800 Weeks Street, East Palo Alto, CA. The agents conducted an inspection and found that Mr. Joshie Yasin Nakamura, Sr. a/k/a Marvin Eugene Barnes was operating the station without authorization from the Commission. Mr. Nakamura was verbally notified of these violations and issued a Notice of Unlicensed Radio Operation (NOUO) at that time.

4. The Commission's San Francisco Field Office continued to receive complaints between July 20 and September 8, 2000 from amateur radio licensees and the OO. They asserted that the same radio station was still operating on several amateur frequencies, including 144.63 MHz, from a residence in East Palo Alto,

¹ 47 U.S.C. § 301.

CA and was continuing to cause interference to amateur communications by jamming and playing music.

5. On September 10, 2000, agents from the Commission's San Francisco Field Office observed radio transmissions on 144.63 MHz. The agents determined that the source of the transmissions was located at 800 Weeks Street, East Palo Alto, CA. The agents conducted an inspection and found that Mr. Joshie Yasin Nakamura, Sr. a/k/a Marvin Eugene Barnes was operating the station without authorization from the Commission. Mr. Nakamura was verbally notified of these violations and issued a NOUO at that time.

III. DISCUSSION

6. Section 301 of the Act sets forth generally that no person shall use or operate any apparatus for the transmission of energy of communications or signals by radio within the United States except under and in accordance with the Act and with a license.²

7. Based on the evidence before us, we find that on September 10, 2000, Joshie Yasin Nakamura, Sr. a/k/a Marvin Eugene Barnes operated radio transmission apparatus without a Commission authorization in repeated³ and willful⁴ violation of Section 301 of the Act.⁵

8. Pursuant to the Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines ("Forfeiture Policy Statement"), the base forfeiture amount is \$10,000 for unlicensed operation.⁶ In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(D) of the Act, which include the nature, circumstances, extent, and gravity of the violation(s), and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.⁷ Applying the Forfeiture Policy Statement and statutory factors to the instant case, a \$10,000 forfeiture is warranted.

² 47 U.S.C. § 301

³ Section 312(f)(2) of the Act, 47 U.S.C. § 312(f)(2), which applies to Section 503(b) of the Act, provides that "[t]he term 'repeated', when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day."

⁴ Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to Section 503(b) of the Act, provides that "[t]he term 'willful', when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act" See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

⁵ 47 U.S.C. § 301.

⁶ 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999).

⁷ 47 U.S.C. § 503(b)(2)(D). See also *Forfeiture Policy Statement*, 15 FCC Rcd at 17100-01 (discussion of upward and downward adjustment factors).

IV. ORDERING CLAUSES

9. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Communications Act of 1934, as amended⁸, and Sections 0.111, 0.311 and 1.80 of the Commission's Rules⁹, Joshie Yasin Nakamura, Sr. a/k/a Marvin Eugene Barnes is hereby NOTIFIED of his APPARENT LIABILITY FOR A FORFEITURE in the amount of ten thousand dollars (\$10,000) for violating Section 301 of the Act.¹⁰

10. IT IS FURTHER ORDERED THAT, pursuant to Section 1.80 of the Commission's Rules¹¹, within thirty days of the release date of this NOTICE OF APPARENT LIABILITY, Joshie Yasin Nakamura, Sr. a/k/a Marvin Eugene Barnes SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

11. Payment of the forfeiture may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note the NAL/Acct. No. 200132960002.

12. The response if any must be mailed to: Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554, ATTN: Enforcement Bureau – TPSD. The response MUST INCLUDE THE NAL/Acct. No. 200132960002 referenced above.

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 (“GAAP”); 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 submitted.

14. Requests for payment of the full amount of this Notice of Apparent Liability under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street,

⁸ 47 U.S.C. § 503(b).

⁹ 47 C.F.R. §§ 0.111, 0.311, 1.80.

¹⁰ 47 U.S.C. § 301.

¹¹ 47 C.F.R. § 1.80.

S.W., Washington, D.C. 20554.¹²

15. IT IS FURTHER ORDERED THAT a copy of this NOTICE OF APPARENT LIABILITY shall be sent by Certified Mail Return Receipt Requested to Joshie Yasin Nakamura, Sr. a/k/a Marvin Eugene Barnes at 800 Weeks Street, East Palo Alto, CA 94301.

FEDERAL COMMUNICATIONS COMMISSION

Thomas N. VanStavern
District Director

¹² See 47 C.F.R. § 1.1914.