

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

In the Matter of)
)
Samuel E. Dacres) File Number EB-04-AT-127
)
Stone Mountain, GA) NAL/Acct.No.200532480001
)
)
) FRN: 0012556692

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: February 25, 2005

By the District Director, Atlanta Office, South Central Region, Enforcement Bureau:

I. INTRODUCTION

1. In this *Notice of Apparent Liability for Forfeiture* (“NAL”), we find Samuel E. Dacres apparently liable for a forfeiture in the amount of ten thousand dollars (\$10,000) for willful and repeated violation of Section 301 of the Communications Act of 1934, as amended (“Act”).¹ Specifically, we find Mr. Dacres apparently liable for operating an FM radio transmitter without a license.

II. BACKGROUND

2. On August 5, 2004, an agent in the Commission’s Atlanta Field Office of the Enforcement Bureau (“Atlanta Office”) received a complaint regarding an unidentified station operating on 101.1 MHz in Stone Mountain, Georgia. On August 5 and 9, 2004, agents from the Atlanta Office detected signals on 101.1 MHz and, using mobile direction-finding techniques determined the source of these signals to be 5567 Memorial Drive, Suite G, Stone Mountain, Georgia. The agents observed an antenna affixed to the top of the building directly above Suite G, which is leased by Sam E. Dacres. Based on field-strength measurements of the signal taken by the agents on August 9, 2004, the station required a Commission authorization to operate.² Because FCC records showed that no license has been issued for the operation of an FM broadcast station at this location, the agents hand-delivered an unlicensed warning letter to the station on August 9, 2004 and mailed an unlicensed warning letter to Mr. Dacres at the station on August 11, 2004. On August 12, 2004, the Atlanta Office received a return receipt from the August 11, 2004 letter signed by Mr. Dacres.

3. On September 27, 2004, Mr. Dacres admitted that he was the owner of the transmitter located at 5567 Memorial Drive, Suite G, Stone Mountain, Georgia. The agents orally

¹47 U.S.C. § 301

²Section 15.239 of the Commission's Rules, 47 C.F.R. § 15.239, provides that non-licensed broadcasting in the 88-108 MHz band is permitted only if the field strength of the transmissions does not exceed 250 µV/m at three meters. Measurements showed that the field strength of the station's signal exceeded the permissible level for a non-licensed low-power radio transmitter.

warned Mr. Dacres of the consequences of unlicensed operation of an FM broadcast station. Agents repeated their oral warnings to Mr. Dacres on November 8 and December 8, 2004. On December 8, 2004, Mr. Dacres again admitted that he operated the radio station without a license. He also stated he was aware that he was in violation of the Commission's Rules.

4. On December 14, 2004 and January 4, 2005, agents from the Atlanta Office again detected transmissions on 101.1 MHz and, using mobile direction-finding techniques, determined the source of these signals to be 5567 Memorial Drive, Suite G, Stone Mountain, Georgia. Based on field-strength measurements of the signal taken by the agents on January 4, 2005, the station required a Commission authorization to operate.³ Another unlicensed warning letter was posted on the door of the station on January 4, 2005.

III. DISCUSSION

5. Section 301 of the Act states 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 granted under the provisions of the Act. Agents from the Atlanta Office positively identified the source of an FM signal transmitting on 101.1 MHz on August 5, 2004, August 9, 2004, December 14, 2004, and January 4, 2005 as 5567 Memorial Drive, Suite G, Stone Mountain, Georgia. Agents conducted field strength measurements of the signals on August 9, 2004 and January 4, 2005 and determined the station exceeded the legal limit for an allowable low power *non-licensed* transmitter. Therefore, a license was required for operation of this station. No licenses have been issued for an FM or LPFM station on 101.1 MHz in the Stone Mountain or Atlanta areas. Mr. Dacres is the only person leasing 5567 Memorial Drive, Suite G. Mr. Dacres admitted to operating the radio station without a license and acknowledged that he was in violation of the Commission's Rules. Furthermore, Mr. Dacres has been warned orally and in writing of the possible penalties for unlicensed operation of the station on several occasions.

6. Based on the evidence before us, we find that Samuel E. Dacres willfully³ and repeatedly⁴ violated Section 301 of the Act by operating an FM radio transmitter without a license.

7. Pursuant to Section 1.80(b)(4) the Rules, the base forfeiture amount for operation without an instrument of authorization is \$10,000.⁵ 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,⁶ which include 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 other such matters as justice may require." Considering the entire record and applying the statutory factors listed above, this case warrants a \$10,000 forfeiture.

³See 47 C.F.R. § 15.239.

³Section 312(f)(1) of the Act, U.S.C. § 312(f)(1), which applies equally 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).

⁴Section 312(f)(2) of the Act, U.S.C. § 312(f)(2), which applies equally 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."

⁵47 C.F.R. § 1.80.

⁶47 U.S.C. § 503(b)(2)(D).

IV. ORDERING CLAUSES

8. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended,⁷ and Sections 0.111, 0.311 and 1.80 of the Commission's Rules,⁸ Samuel E. Dacres is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of ten thousand dollars (\$10,000) for willful and repeated violation of Section 301 of the Communications Act of 1934, as amended, by operating an FM radio transmitter without a license.

9. **IT IS FURTHER ORDERED** that, pursuant to Section 1.80 of the Commission's Rules,⁴ within thirty days of the release date of this *NAL*, Samuel E. Dacres **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

10. Payment of the forfeiture may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission. Payment by check or money order may be mailed to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. Payment by overnight mail may be sent to BankOne/LB 73482, 525 West Monroe, 8th Floor Mailroom, Chicago, IL 60661. Payment by wire transfer may be made to ABA Number 071000013, receiving bank Bank One, and account number 1165259. The payment should note the *NAL*/Acct. No. [], and FRN [], referenced in the letterhead above. Requests for payment of the full amount of this *NAL* under an installment plan should be sent to: Federal Communications Commission, Chief, Revenue and Receivable Operations Group, 445 12th street, SW, Washington, D.C. 20554.

11. The response, if any, must be mailed to Federal Communications Commission, Enforcement Bureau, South Central Region, Atlanta Office, 3575 Koger Blvd., Suite 320, Duluth, Georgia 30096 within thirty days of the release date of this *NAL* and **MUST INCLUDE THE** *NAL*/Acct. No. referenced above.

12. 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.

⁷47 U.S.C. § 503(b).

⁸47 C.F.R. §§ 0.111, 0.311, 1.80.

⁴47 C.F.R. § 1.80.

13. **IT IS FURTHER ORDERED** that a copy of this *NAL* shall be sent by regular and Certified Mail Return Receipt Requested to Samuel E. Dacres at his address of record.

FEDERAL COMMUNICATIONS COMMISSION

Fred L. Broce
District Director
Atlanta Office
South Central Region
Enforcement Bureau