

**Federal Communications Commission**

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

In the Matter of	)	
	)	
Raymond Frank	)	File Number: EB-09-HU-0051
	)	
Austin, Texas	)	NAL/Acct. No. 200932540003
	)	
	)	FRN 0019027234

**NOTICE OF APPARENT LIABILITY FOR FORFEITURE**

Released: August 13, 2009

By the Resident Agent, Houston Office, South Central Region, Enforcement Bureau:

**I. INTRODUCTION**

1. In this Notice of Apparent Liability for Forfeiture (“NAL”), we find that Raymond Frank apparently willfully and repeatedly violated Section 301 of the Communications Act of 1934, as amended (“Act”)<sup>1</sup> by operating an unlicensed radio transmitter on the frequency 90.1 MHz in Austin, Texas. We conclude, pursuant to Section 503(b) of the Act,<sup>2</sup> that Mr. Frank is apparently liable for a forfeiture in the amount of ten thousand dollars (\$10,000).

**II. BACKGROUND**

2. On January 23, 2007, in response to a complaint about an unlicensed radio station in the Austin, Texas area, agents from the Commission’s Dallas Office of the Enforcement Bureau (“Dallas Office”) confirmed by direction finding techniques that signals on the frequency 100.1 MHz were emanating from Mr. Frank’s residence in Austin, Texas.

3. On February 22, 2007, the Dallas Office issued a Notice of Unlicensed Operation to Mr. Frank warning him that the radio transmissions on 100.1 MHz from his residence were not authorized by the Commission and outlining possible penalties for continued unlicensed operation. On March 5, 2007, the Dallas Office received a reply from Mr. Frank stating the transmissions had ceased.

4. On July 22, 2009, in response to a complaint about an unlicensed radio station in the Austin, Texas area, agents from the Commission’s Houston Office of the Enforcement Bureau (“Houston Office”) confirmed by direction finding techniques that signals on the frequency 90.1 MHz were emanating from Mr. Frank’s residence in Austin, Texas. The agents took field strength measurements of the signals and determined the signals exceeded the limits for operation under Part 15 of Commission’s Rules

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<sup>1</sup> 47 U.S.C. § 301.

<sup>2</sup> 47 U.S.C. § 503(b).

(“Rules”)<sup>3</sup> and therefore, required a license. A search of the Commission’s databases found no evidence of a Commission authorization for operation on 90.1 MHz at this location in Austin, Texas.

5. On August 3, 2009, agents from the Commission’s Houston Office of the Enforcement Bureau again confirmed by direction finding techniques that signals on the frequency 90.1 MHz were emanating from Mr. Frank’s residence in Austin, Texas. The agents took field strength measurements of the signals and determined the signals exceeded the limits for operation under Part 15 of the Rules<sup>4</sup> and therefore, required a license. A search of the Commission’s databases found no evidence of a Commission authorization for operation on 90.1 MHz at this location in Austin, Texas.

### **III. DISCUSSION**

6. Section 503(b) of the Act provides that any person who willfully or repeatedly fails to comply substantially with the terms and conditions of any license, or willfully or repeatedly fails to comply with any of the provisions of the Act or of any rule, regulation or order issued by the Commission thereunder, shall be liable for a forfeiture penalty. The term “willful” as used in Section 503(b) of the Act has been interpreted to mean simply that the acts or omissions are committed knowingly.<sup>5</sup> The term “repeated” means the commission or omission of such act more than once or for more than one day.<sup>6</sup>

7. Section 301 of the Act<sup>7</sup> 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 the Act and with a license granted under the provisions of the Act. On July 22 and August 3, 2009, agents from the Houston Office determined that an unlicensed radio station on 90.1 MHz operated from Mr. Frank’s residence. Mr. Frank was aware that such action violated the Act, as he received a Notice of Unlicensed Operation on February 22, 2007 for operating an unlicensed radio station from his residence. Based on the evidence before us, we find that Mr. Frank apparently willfully and repeatedly violated Section 301 of the Act by operating radio transmission apparatus without a license on July 22, 2009 and August 3, 2009.

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*”), and Section 1.80 of the Rules, the base forfeiture amount for operation without an instrument of authorization is \$10,000.<sup>8</sup> In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(E) of the Act, which include the nature, circumstances, extent, and gravity of the

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<sup>3</sup> Section 15.239 of the 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  $\mu$ V/m at three meters. 47 C.F.R. §15.239. On July 22, 2009, field strength measurements indicated that the signals were 13,048 times greater than the maximum permissible level for a non-licensed Part 15 transmitter.

<sup>4</sup> On August 3, 2009, field strength measurements indicated that the signals were 15,434 times greater than the maximum permissible level for a non-licensed Part 15 transmitter.

<sup>5</sup> Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under 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 or any rule or regulation of the Commission authorized by this Act....” See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

<sup>6</sup> Section 312(f)(2) of the Act, 47 U.S.C. § 312(f)(2), which also applies to violations for which forfeitures are assessed under 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.”

<sup>7</sup> 47 U.S.C. § 301.

<sup>8</sup> 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999); 47 C.F.R. §1.80.

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violations, and with respect to the violator, the degree of culpability, and history of prior offenses, ability to pay, and other such matters as justice may require.<sup>9</sup> Applying the *Forfeiture Policy Statement*, Section 1.80 of the Rules, and the statutory factors to the instant case, we conclude that Mr. Frank is apparently liable for a (\$10,000) forfeiture.

### IV. ORDERING CLAUSES

9. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.111, 0.311, 0.314 and 1.80 of the Commission's Rules, Raymond Frank is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of ten thousand dollars (\$10,000) for violations of Section 301 of the Act.<sup>10</sup>

10. **IT IS FURTHER ORDERED** that, pursuant to Section 1.80 of the Commission's Rules within thirty days of the release date of this Notice of Apparent Liability for Forfeiture, Raymond Frank **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 must be made by credit card, check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the Account Number and FRN Number referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank TREAS/NYC, and account number 27000001. For payment by credit card, an FCC Form 159 (Remittance Advice) must be submitted. 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). Requests for full payment under an installment plan should be sent to: Chief Financial Officer -- Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554.<sup>8</sup> If you have questions, please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: [ARINQUIRIES@fcc.gov](mailto:ARINQUIRIES@fcc.gov). If payment is made, Raymond Frank will send electronic notification on the date said payment is made to [SCR-Response@fcc.gov](mailto:SCR-Response@fcc.gov).

12. The response, if any, must be mailed to Federal Communications Commission, Enforcement Bureau, South Central Region, Houston Office, 9597 Jones Road, #362, Houston, Texas, 77065 and must include the NAL/Acct. No. referenced in the caption.

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. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture shall be sent by Certified Mail, Return Receipt Requested, and regular mail, to Raymond Frank at his address of record.

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<sup>9</sup> 47 U.S.C. § 503(b)(2)(E).

<sup>10</sup> 47 U.S.C. §§ 301, 503(b), 47 C.F.R. §§ 0.111, 0.311, 0.314, 1.80.

<sup>8</sup> See 47 C.F.R. § 1.1914.

FEDERAL COMMUNICATIONS COMMISSION

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