

Federal Communications Commission

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

In the Matter of)
)
Jerry and Deborah Stevens) File Number: EB-09-HU-0065
)
Austin, Texas) NAL/Acct. No. 201032540002
)
) FRN 0019271485

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: November 10, 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 Jerry and Deborah Stevens apparently willfully and repeatedly violated Section 301 of the Communications Act of 1934, as amended (“Act”)¹ 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,² that Jerry and Deborah Stevens are apparently liable for a forfeiture in the amount of ten thousand dollars (\$10,000).

II. BACKGROUND

2. On August 27, 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 Jerry and Deborah Stevens’ 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 (“Rules”)³ 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.

3. On August 31, 2009, the Houston Office issued a Notice of Unlicensed Operation to Jerry and Deborah Stevens warning them that the radio transmissions on 90.1 MHz from their residence were not authorized by the Commission and outlining possible penalties for continued unlicensed operation. On

¹ 47 U.S.C. § 301.

² 47 U.S.C. § 503(b).

³ 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 μV/m at three meters. 47 C.F.R. §15.239. On August 27, 2009, field strength measurements indicated that the signals were 1,110 times greater than the maximum permissible level for a non-licensed Part 15 transmitter.

September 14, 2009, the Houston Office received a reply from Jerry and Deborah Stevens acknowledging receipt of the Notice of Unlicensed Operation and requesting additional time to provide information. Jerry and Deborah Stevens were granted an additional thirty days to provide the Commission with information concerning authority to operate on the frequency 90.1 MHz from their residence.

4. On September 21, 2009, agents from the Houston Office confirmed by direction finding techniques that signals on the frequency 90.1 MHz were emanating from Jerry and Deborah Stevens' 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.⁴

5. On October 16, 2009, an agent from the Houston Office again confirmed by direction finding techniques that signals on the frequency 90.1 MHz were emanating from Jerry and Deborah Stevens' residence in Austin, Texas. The agent took field strength measurements of the signals and determined the signals exceeded the limits for operation under Part 15 of the Rules.⁵

6. On October 19, 2009, the Houston Office received a second response to the Notice of Unlicensed Operation from Jerry and Deborah Stevens. In this response, Jerry and Deborah Stevens admitted operating radio transmitting equipment only within the boundaries of the State of Texas, and questioned the Commission's jurisdiction over intrastate communications.

III. DISCUSSION

7. 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.⁶ The term "repeated" means the commission or omission of such act more than once or for more than one day.⁷

8. Section 301 of the Act⁸ 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, specifically "from one place in any State, Territory, or possession of the United States or in the District of Columbia to another place in the same State, Territory, possession, or District," or from one place within a State to another State, except under and in accordance with the Act and with a license granted under the provisions of the Act. Thus, Section 301 of the Act explicitly sets forth the Commission's jurisdiction over all radio

⁴ On September 21, 2009, field strength measurements indicated that the signals were 1,225 times greater than the maximum permissible level for a non-licensed Part 15 transmitter.

⁵ On October 16, 2009, field strength measurements indicated that the signals were 1,547 times greater than the maximum permissible level for a non-licensed Part 15 transmitter.

⁶ 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).

⁷ 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."

⁸ 47 U.S.C. § 301.

transmissions, both interstate and intrastate.⁹ On August 27, September 21, and October 16, 2009, agents from the Houston Office determined that unlicensed radio transmissions on the frequency 90.1 MHz originated from Jerry and Deborah Stevens' residence. Jerry and Deborah Stevens were notified that the unlicensed radio transmissions violated the Act by a Notice of Unlicensed Operation dated August 31, 2009. Jerry and Deborah Stevens did not deny that they operated an unlicensed radio station from their residence, and admitted to operating a radio station solely within the borders of Texas. Based on the evidence before us, we find that Jerry and Deborah Stevens apparently willfully and repeatedly violated Section 301 of the Act by operating radio transmission apparatus without a license on September 21, 2009 and October 16, 2009.

9. 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 \$10,000.¹⁰ 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 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.¹¹ Applying the *Forfeiture Policy Statement*, Section 1.80 of the Rules, and the statutory factors to the instant case, we conclude that Jerry and Deborah Stevens are apparently liable for a \$10,000 forfeiture.

IV. ORDERING CLAUSES

10. 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, Jerry and Deborah Stevens are 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.¹²

11. **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, Jerry and Deborah Stevens **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

12. 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. 20554.⁸ If you have questions, please contact the Financial Operations Group Help

⁹ See *Joseph Frank Ptak*, Decision, 14 FCC Rcd 9317, 9320, para. 13 (1999). See also *U.S. v. Butterfield*, 91 F.Supp.2d 704 (D.VT 2000).

¹⁰ 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999); 47 C.F.R. §1.80.

¹¹ 47 U.S.C. § 503(b)(2)(E).

¹² 47 U.S.C. §§ 301, 503(b), 47 C.F.R. §§ 0.111, 0.311, 0.314, 1.80.

⁸ See 47 C.F.R. § 1.1914.

Federal Communications Commission

Desk at 1-877-480-3201 or Email: ARINQUIRIES@fcc.gov. If payment is made, Jerry and Deborah Stevens will send electronic notification on the date said payment is made to SCR-Response@fcc.gov.

13. 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.

14. 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.

15. **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 Jerry and Deborah Stevens at their address of record.

FEDERAL COMMUNICATIONS COMMISSION

Stephen P. Lee
Resident Agent,
Houston Office
South Central Region
Enforcement Bureau