

Federal Communications Commission

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

In the Matter of)	
)	
Luna Park Housing Corporation)	File Number: EB-09-NY-0301
)	
)	NAL/Acct. No.: 201032380004
)	
Brooklyn, New York)	FRN: 0009 1764 96

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: January 8, 2010

By the District Director, New York Office, Northeast Region, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture (“NAL”), we find that Luna Park Housing Corporation (“Luna Park”), apparently willfully and repeatedly violated Section 301 of the Communications Act of 1934, as amended (“Act”),¹ by providing services and facilities incidental to the operation of an unlicensed radio station on the frequency 99.9 MHz in Brooklyn, New York. We conclude, pursuant to Section 503(b) of the Communications Act of 1934, as amended (“Act”),² that Luna Park is apparently liable for a forfeiture in the amount of ten thousand dollars (\$10,000).

II. BACKGROUND

2. On October 12 and 13, 2009, in response to several interference complaints, a Commission agent, using a mobile direction-finding vehicle, monitored the frequency 99.9 MHz in Brooklyn, New York. The agent observed a radio station broadcasting on 99.9 MHz and determined that the station was operating from an apartment building located at 2814 West 8th Street in Brooklyn, New York. The agent observed an FM broadcast antenna on top of a water tank on the roof of the apartment building located at 2814 West 8th Street. The agent subsequently took field strength measurements and determined that the signals being broadcast exceeded the limits for operation under Part 15 of the Commission’s Rules (“Rules”)³ and therefore required a license. The agent searched Commission databases and found no evidence of a Commission authorization for this operation on 99.9 MHz in Brooklyn, New York.

3. After taking the field strength measurements on October 13, 2009, a Commission agent

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. Measurements showed that the field strength of the station’s signal exceeded the permissible level for a non-licensed Part 15 transmitter.

went to the office of the building management company, Luna Park Housing Corporation (“Luna Park”), located at 2879 West 12th Street, Brooklyn, New York. The agent conducted an interview with the Director of Operations (“Director”) regarding the unlicensed radio station operating on 99.9 MHz at 2814 West 8th Street. The Director said that he was aware of the antenna on the roof of the apartment building (Building #3) at 2814 West 8th Street and that a five-year lease had been executed between Luna Park and Mark Nierman of Kakadu Productions, Inc. (“Kakadu”) allowing a radio station to operate in the bulkhead room of Building #3 beginning May 30, 2009 for \$6,000 per year. The agent then conducted an inspection on the roof of 2814 West 8th Street with the building superintendent and observed the FM broadcast antenna on top of the water tank and traced the coaxial cable from the antenna to the bulkhead room on the roof. The radio station equipment was located inside the bulkhead room and the agent observed that the radio station equipment was active. The agent took down information about the equipment and then requested that the building superintendent shut down all the equipment, which he did.

4. On October 16, 2009, the New York Office sent, via regular mail and certified mail, return receipt requested, a Notice of Unlicensed Operation (“NOUO”) addressed to Luna Park at its address of record. The NOUO warned Luna Park that operation of the unlicensed radio station on 99.9 MHz or the provision of services or facilities incidental to the operation of the unlicensed radio station on 99.9 MHz at 2814 West 8th Street in Brooklyn, New York violated Section 301 of the Act and outlined the potential penalties for such a violation, including seizure of the equipment, fines and imprisonment. The NOUO also directed Luna Park to terminate operation of the unlicensed station immediately and provided Luna Park ten days to reply.

5. On October 29, 2009, the New York Office received a reply to the NOUO issued to Luna Park. In its response, Luna Park confirmed that it was notified by the Commission agent of the unlicensed radio station and that the transmitter was shut down by the building superintendent after the agent’s inspection of the radio station equipment. Luna Park also reported that Mark Nierman of Kakadu later retrieved the transmitter from the roof of the building.

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.⁴ The term “repeated” means the commission or omission of such act more than once or for more than one day.⁵

7. Section 301 of the Act 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. Section 3(33) of the Act defines “communications by radio” as “the transmission by radio of writing, signs, signals, pictures, and sounds of all kinds, including all instrumentalities, facilities, apparatus, and services (among other

⁴ 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).

⁵ 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.”

thing the receipt, forwarding, and delivery of communications) incidental to such transmission.”⁶ Agents determined that, on October 12, 2009, and October 13, 2009, an unlicensed radio station was broadcasting on 99.9 MHz from 2814 West 8th Street in Brooklyn, New York. Luna Park’s Director of Operations reported that Luna Park authorized Kakadu to operate a radio station from the bulkhead room of Building #3 located at 2814 West 8th Street pursuant to a five-year lease agreement beginning May 30, 2009 for the amount of \$6,000 per year. Accordingly, we find that Luna Park provided services and facilities incidental to the transmission of communications by radio occurring on 99.9 MHz at 2814 West 8th Street in Brooklyn, New York. We have previously held that liability for unlicensed operation may be assigned to any individual taking part in the operation of the unlicensed station, regardless of who else may be responsible for the operation, because Section 301 of the Act provides that “no person shall use or operate” radio transmission equipment.⁷ Taken together, we find that Luna Park’s actions amounted to willful and repeated violations of Section 301 of the Act.⁸

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 \$10,000.⁹ 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.¹⁰ Applying the *Forfeiture Policy Statement*, Section 1.80 of the Rules, and the statutory factors to the instant case, we conclude that Luna Park 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, Luna Park Housing Corporation 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.¹¹

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, Luna Park Housing Corporation **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

⁶ 47 U.S.C. § 153(33).

⁷ 47 U.S.C. § 301; *See Joni K. Craig*, Forfeiture Order, 21 FCC Rcd 10793 (EB 2006); *See also Jean L. Senatus*, Forfeiture Order, 20 FCC Rcd 14418 (EB 2005). The term “person” is defined in the Act to include “an individual, partnership, association, joint stock company, trust, or corporation.” 47 U.S.C. § 153(32).

⁸ We note that Luna Park had some indication that the station was not licensed soon after it entered into the lease agreement with Kakadu on May 30, 2009. In a letter from Alla Kachan, Kakadu’s attorney, to Luna Park, dated June 12, 2009, Mr. Kachan stated that Kakadu is “in the process of applying for a license and a permit under two separate provisions of an emergency communications law” and that additionally it is “undertaking a full power FM license application through the formal FCC licensing procedure.”

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

¹⁰ 47 U.S.C. § 503(b)(2)(E).

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

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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. 20554.¹² If you have questions, please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: ARINQUIRIES@fcc.gov. If payment is made, Luna Park Housing Corporation will send electronic notification on the date said payment is made to NER-Response@fcc.gov.

12. The response, if any, must be mailed to Federal Communications Commission, Enforcement Bureau, Northeast Region, New York Office, 201 Varick Street, Suite 1151, New York, NY 10014 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 Luna Park Housing Corporation at its address of record.

FEDERAL COMMUNICATIONS COMMISSION

Daniel W. Noel
District Director
New York Office
Northeast Region
Enforcement Bureau

¹² See 47 C.F.R. § 1.1914.