

**Federal Communications Commission**

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

In the Matter of	)	File Number: EB-09-NY-0234
	)	
Marixsa Rolon	)	NAL/Acct. No: 201032380006
	)	
Plainfield, New Jersey	)	FRN: 0019205715

**NOTICE OF APPARENT LIABILITY FOR FORFEITURE**

January 20, 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 Marixsa Rolon apparently willfully and repeatedly violated Section 301 of the Communications Act of 1934, as amended ("Act"),<sup>1</sup> by providing services and facilities incidental to the operation of an unlicensed radio transmitter on the frequencies 90.1 MHz and 96.7 MHz in Plainfield, New Jersey. We conclude, pursuant to Section 503(b) of the Communications Act of 1934, as amended ("Act"),<sup>2</sup> that Marixsa Rolon is apparently liable for a forfeiture in the amount of ten thousand dollars (\$10,000).

**II. BACKGROUND**

2. On July 29, 2009, the New York Office of the FCC's Enforcement Bureau received a complaint from a media consultant in North Plainfield, New Jersey, regarding interference to licensed adjacent channel radio stations from illegal broadcast stations operating on 90.1 MHz and 96.7 MHz in North Plainfield, New Jersey.

3. On August 2 and August 3, 2009, agents from the Commission's New York Field Office, using a mobile direction finding vehicle, monitored the frequency 90.1 MHz and 96.7 MHz in Plainfield, New Jersey. The agents observed a radio broadcast on 90.1 MHz and 96.7 MHz and identified the source of the transmissions as FM broadcasting antennas on the roof of 217 East 7<sup>th</sup> Avenue, Plainfield, New Jersey. The agents 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")<sup>3</sup> and therefore required a license. An agent searched Commission databases and found no evidence of a Commission authorization for operation on 90.1 MHz or 96.7 MHz at this location in Plainfield, New Jersey.

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<sup>1</sup> 47 U.S.C. § 301.

<sup>2</sup> 47 U.S.C. § 503(b).

<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 micro volts per meter ("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.

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4. On August 4, 2009, agents from the Commission's New York Field Office, using a mobile direction finding vehicle, monitored the frequencies 90.1 MHz and 96.7 MHz in Plainfield, New Jersey. This time, the agents observed a radio broadcast on 90.1 MHz only and identified the source of the transmissions as one of two FM broadcasting antennas on the roof of 217 East 7<sup>th</sup> Avenue. The agents again took field strength measurements and determined that the signals being broadcast still exceeded the limits for operation under Part 15 of the Rules and therefore required a license.

5. On the same day, after completing the field strength measurements, Commission agents returned to 217 East 7<sup>th</sup> Avenue and met with the building superintendent and the building owner. The superintendent accompanied the agents to the roof, where they observed the two FM broadcasting antennas and a coaxial cable running from the antennas into one of the apartments. The superintendent advised the agents that the antenna coaxial cable was going into apartment # 48, but he was not certain who leased apartment #48. The agents subsequently obtained from the building's management company a copy of the lease agreement for apartment #48, which identified Ms. Rolon as the tenant.

6. On August 11, 2009, the New York Office issued Notices of Unlicensed Operation ("NOUO") by First Class and Certified Mail Return Receipt Requested to Ms. Rolon at 217 East 7<sup>th</sup> Avenue, Apartment # 48 and at 1335 Putnam Avenue, Plainfield, New Jersey 07060.<sup>4</sup> The New York Office did not receive a reply to the Notices of Unlicensed Operation.

7. On September 29, 2009, the New York Office sent a Letter of Inquiry ("LOI"), First Class and Certified Mail, to Ms. Rolon at 1335 Putnam Avenue to determine ownership of the unlicensed radio station. Although the certified mail receipt received by the New York Office indicated that the LOI was successfully delivered on October 1, 2009, a reply to the Letter of Inquiry was never received.

### III. DISCUSSION

8. 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>

9. 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

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<sup>4</sup> A NOUO was sent to Ms. Rolon at 1335 Putnam Avenue because the management company that provided the agents with the lease agreement for apartment #48 also showed agents a copy of Ms. Rolon's driver's license, which identified her address as 1335 Putnam Avenue, Plainfield, NJ, 07060.

<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."

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thing the receipt, forwarding, and delivery of communications) incidental to such transmission.”<sup>7</sup> Agents determined that, on August 2, 3 and 4, 2009, unlicensed broadcast stations were operating from apartment # 48 at 217 East 7<sup>th</sup> Avenue, Plainfield, New Jersey. A lease agreement obtained from the building management company confirmed that Marixsa Rolon is the lessee of apartment # 48. We have previously held that liability for unlicensed operation may be assigned to an individual who provides services and facilities incidental to the transmission of communications by radio.<sup>8</sup> We find that Marixsa Rolon is responsible for the unlicensed station operations on 90.1 MHz and 96.7 MHz at 217 East 7<sup>th</sup> Avenue, Plainfield, New Jersey and that her actions amounted to willful and repeated violations of Section 301 of the Act on August 2, 3 and 4, 2009.

10. 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>9</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 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>10</sup> Applying the *Forfeiture Policy Statement*, Section 1.80, and the statutory factors to the instant case, we conclude that Marixsa Rolon is apparently liable for a \$10,000 forfeiture.

#### IV. ORDERING CLAUSES

11. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.111, 0.311 and 1.80 of the Commission’s Rules, Marixsa Rolon 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>11</sup>

12. **IT IS FURTHER ORDERED** that, pursuant to Section 1.80 of the Commission’s Rules, within thirty (30) days of the release date of this Notice of Apparent Liability for Forfeiture, Marixsa Rolon **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

13. Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/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[s] 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

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<sup>7</sup> 47 U.S.C. § 153(33).

<sup>8</sup> See *Joni K. Craig*, Forfeiture Order, 21 FCC Rcd 10793 (EB 2006).

<sup>9</sup> 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999); 47 C.F.R. §1.80. We note that, while we could have proposed the base forfeiture amount of \$10,000 for each of the unlicensed frequencies, we believe that the circumstances presented here do not warrant a \$20,000 forfeiture.

<sup>10</sup> 47 U.S.C. § 503(b)(2)(D).

<sup>11</sup> 47 U.S.C. § 503(b), 47 C.F.R. §§ 0.111, 0.311, 0.314, 1.80, 47 U.S.C. §301.

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sent to: Chief Financial Officer -- Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554. Please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: [ARINQUIRIES@fcc.gov](mailto:ARINQUIRIES@fcc.gov) with any questions regarding payment procedures. If payment is made, Ms. Rolon must send electronic notification on the date said payment is made to [NER-Response@fcc.gov](mailto:NER-Response@fcc.gov).

14. 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.

15. 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.

16. **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 Marixsa Rolon at his address of record.

FEDERAL COMMUNICATIONS COMMISSION

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