

Federal Communications Commission

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

In the Matter of)
)
Delroy Johnson, Paul Parara, and Richard Parara) File Number EB-09-BS-0027
)
Hyde Park, Massachusetts) NAL/Acct. No. 201032260001
Dorchester, Massachusetts)
) FRN 0019638386, 0018951723, 0019638394

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: March 8, 2010

By the District Director, Boston Office, Northeast Region, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture (“NAL”), we find that Delroy Johnson, Paul Parara, and Richard Parara willfully and repeatedly violated Section 301 of the Communications Act of 1934, as amended (“Act”),¹ by operating and providing services and facilities incidental to the operation of an unlicensed transmitter on 97.5 MHz in Hyde Park and Dorchester, Massachusetts. We conclude, pursuant to Section 503(b) of the Act,² that Delroy Johnson, Paul Parara, and Richard Parara are apparently jointly and severally liable for a forfeiture in the amount of ten thousand dollars (\$10,000).

II. BACKGROUND

2. On July 8, 2009, the Enforcement Bureau's Boston Office received complaints from licensed broadcasters of an unlicensed radio station on 97.5 MHz in Boston, Massachusetts, which identified itself as WPOT “Hot97” and advertised its website -- hot97boston.com.

3. On July 14, 2009, agents from the Boston Office monitored 97.5 MHz in the Boston, Massachusetts area and, using direction finding techniques, positively identified the source of the signal on 97.5 MHz to a commercial building at One Westinghouse Plaza, Hyde Park, Massachusetts. Agents observed an antenna mounted on top of the building with a coaxial cable leading to a basement window. 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”)³ and therefore, the station required a license. FCC records showed that no license had been issued to operate an FM broadcast station on 97.5 MHz in Hyde Park, Massachusetts.

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.

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4. After taking field strength measurements, agents entered the building and proceeded to the area where the coaxial cable entered the basement window. A radio station studio was observed on one side of a central hallway where agents were greeted by Richard Parara. Agents interviewed Richard and he provided access to the transmitter, which was located in his office directly across the hallway from the studio. Agents inspected the transmitter and recorded the model and serial numbers. Richard then attempted to contact his cousin Paul Parara, who he stated was in charge of the transmitter. Agents handed Richard a Notice of Unlicensed Operation (NOUO), which warned him that operation of the unlicensed radio station on 97.5 MHz 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 Richard to terminate operation of the unlicensed station immediately and provided him ten days to reply.

5. Agents then spoke with the building manager by phone and explained that an unlicensed radio station was operating in the basement of the building located at One Westinghouse Plaza in Hyde Park. The building manager provided a phone number for Paul Parara. Agents returned to the station and Paul Parara was at the studio. Agents gave Paul a verbal warning regarding operation of an unlicensed radio station and advised him that he would be receiving a formal NOUO in the mail. The agents then observed Paul direct an associate to shut down the transmitter.

6. On July 16, 2009, agents again monitored 97.5 MHz and, using direction finding techniques, traced the signal to One Westinghouse Plaza. Agents visited the studio and met with Paul Parara. Paul attempted unsuccessfully to contact Delroy Johnson, who he stated was the station's owner. Paul stated that he was advised that an application for a license had been filed, but agents advised him that no such license had been granted.

7. On July 17, 2009, agents contacted Motherbrook LLC ("Motherbrook"), the owner of the building at One Westinghouse Plaza. At the agents' request, Motherbrook provided a copy of the lease agreement for the two suites (suites 2 and 2a) used for the radio station. Paul Parara, Delroy Johnson, and Richard Parara were among the lessees.

8. On July 20, 2009, the Boston Office issued a NOUO to Paul Parara for unlicensed operation on 97.5 MHz in Hyde Park, MA. The Notice was sent via certified mail and regular mail to Paul's home address as identified by the driver's license he presented to agents at the studio on July 16, 2009. The copy of the NOUO sent by certified mail was returned unclaimed, but the copy sent by regular mail was not. No written reply was received.

9. On July 29, July 31, August 4, and August 6, 2009, the Boston Office received email complaints from an FCC licensed broadcaster stating that the unlicensed operator on 97.5 MHz was back on the air and causing interference to the station's Boston listeners.

10. On September 1, 2009, agents again monitored 97.5 MHz and, using direction finding techniques, traced the source of the signal to 76 Esmond St., Dorchester, Massachusetts. Agents observed an antenna mounted on top of a sawed-off tree with a coaxial cable leading to the basement. 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 and therefore, the station required a license. FCC records showed that no license had been issued to operate an FM broadcast station at this location in Dorchester, Massachusetts.

11. Agents met with a resident at this address, who granted them access to the basement of the building where the transmitter was located. Agents inspected the transmitter and determined that, based on the model and serial numbers, it was the same unit that was previously installed at One Westinghouse Plaza. The resident stated that the owner of the building is Marcia Johnson and that Delroy Johnson, who sometimes lived at that address, was the owner of the station. After being advised

that the station was unlicensed, the resident turned off the transmitter.

12. On September 3, 2009, the Boston Office issued a NOUO to Delroy A. Johnson for unlicensed operation on 97.5 MHz in Dorchester, Massachusetts. The Notice was sent via certified mail and regular mail to Delroy's home address as identified by public records. The certified mail was returned unclaimed. No written reply was received. The Boston Office also issued a NOUO to Marcia Johnson, the owner and resident of the property at 76 Esmond St., Dorchester, MA 02121, for providing services and facilities incidental to the operation of an unlicensed radio transmitter. The notice was sent via certified and regular mail. The copy of the NOUO sent by certified mail was returned unclaimed, but the copy sent by regular mail was not. No written reply was received.

13. On September 3, 2009, the Boston Office received a phone call from Marcia Johnson, who stated that her step-son, Delroy Johnson, installed the radio station and told her he had a license good for three years. She reported that she told Delroy to come and take the station down and that she was taking the day off from work to make sure he does. Later that day, agents monitored 97.5 MHz and found that the station was off the air.

III. DISCUSSION

14. 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

15. 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.⁶ Agents determined that an unlicensed radio station operated on 97.5 MHz from One Westinghouse Plaza in Hyde Park, Massachusetts, on July 14 and July 16, 2009, and from 76 Esmond Street in Dorchester, MA, on September 1, 2009. Richard Parara and Paul Parara were at One Westinghouse Plaza when the agents observed the station in operation on July 14 and July 16, 2009. Delroy Johnson was identified by Paul Parara, Marcia Johnson, and a resident at 76 Esmond Street, as the station's owner. Based on the serial number and model, agents confirmed that the same transmitter was used in the operation at One Westinghouse Plaza and at 76 Esmond Street. Notwithstanding the issuance of a verbal warning and a hand-delivered NOUO at the inspection on July 14, 2009, the station continued to operate on July 16, 2009 from One Westinghouse Plaza in Hyde Park. Similarly, although a NOUO was issued on July 20, 2009, agents found that the station continued to operate, albeit at a different location, on September 1, 2009. Because Delroy Johnson, Paul Parara, and Richard Parara knowingly operated a radio station and because the station continued to operate despite repeated warnings that the station was illegal, we find

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."

⁶ 47 U.S.C. § 301.

that the violation was willful. The operation took place on more than one day; we therefore find that the violation was repeated.

16. We also find that Delroy Johnson, Paul Parara, and Richard Parara are liable for the unlicensed operation as lessees of the office space at One Westinghouse Plaza that was used in the operation of the unlicensed station. 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 things the receipt, forwarding, and delivery of communications) incidental to such transmission.”⁷ As lessees at One Westinghouse Plaza, we find that Delroy Johnson, Paul Parara, and Richard Parara provided services and facilities incidental to the transmission of unlicensed communications by radio occurring on 97.5 MHz at One Westinghouse Plaza. 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.⁸ We find that the actions of Delroy Johnson, Paul Parara, and Richard Parara amounted to willful and repeated violations of Section 301 of the Act.

17. Based on the evidence before us, we find that Delroy Johnson, Paul Parara, and Richard Parara apparently willfully and repeatedly violated Section 301 of the Act by operating radio transmission equipment on 97.5 MHz in Hyde Park on July 14, 2009 and July 16, 2009, and at 76 Esmond Street in Dorchester, Massachusetts on September 1, 2009. We further find that Paul Parara, Richard Parara, and Delroy Johnson apparently willfully and repeatedly violated Section 301 of the Act by providing services and facilities incidental to the unlicensed operation on 97.5 MHz in Hyde Park on July 14, 2009 and July 16, 2009.

18. 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 Delroy Johnson, Paul Parara, and Richard Parara apparently are jointly and severally liable for a \$10,000 forfeiture.

IV. ORDERING CLAUSES

19. 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, Delroy Johnson, Paul Parara, and Richard Parara are hereby **NOTIFIED** of their **APPARENT JOINT AND SEVERAL LIABILITY FOR A FORFEITURE** in the amount of ten thousand dollars (\$10,000) for violations of Section 301 of the Act.¹¹

⁷ 47 U.S.C. § 153(33).

⁸ 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).

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

⁹ 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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20. **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, Delroy Johnson, Paul Parara, and Richard Parara jointly and severally, **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

21. 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. 20554.¹² 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, electronic notification on the date said payment is made must be sent to NER-Response@fcc.gov.

22. The response, if any, must be mailed to Federal Communications Commission, Enforcement Bureau, Northeast Region, Boston Office, 1 Batterymarch Park, Quincy, MA 02169 and must include the NAL/Acct. No. referenced in the caption.

23. 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.

24. **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 Delroy Johnson, Paul Parara, and Richard Parara at their addresses of record.

FEDERAL COMMUNICATIONS COMMISSION

Dennis Loria
District Director
Boston Office
Northeast Region
Enforcement Bureau

¹² See 47 C.F.R. §1.1914.