

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of)	
)	
Fabrice Polynice)	File No.: EB-FIELDSCR-13-00012949
North Miami, FL)	NAL/Acct. No.: 201732600002
)	FRN: 0022240279
)	
Harold Sido and Veronise Sido)	File No.: EB-FIELDSCR-15-00018596
North Miami, FL)	NAL/Acct. No.: 201732600002
)	FRN: 0026090365

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: September 26, 2017

Released: September 26, 2017

By the Commission: Chairman Pai and Commissioners Clyburn, O’Rielly, and Carr issuing separate statements.

I. INTRODUCTION

1. In this case, we propose a monetary forfeiture of \$144,344—the highest amount permissible in this matter under the Communications Act of 1934, as amended (the Act)—against Fabrice Polynice, Harold Sido, and Veronise Sido (Mr. and Mrs. Sido referred to collectively as the Sidos) for willfully operating an unlicensed FM broadcast radio station on 90.1 MHz from the Sido residence in North Miami, Florida. Mr. Polynice, Mr. Sido, and Mrs. Sido appear to have jointly engaged in the longstanding illicit operation of the unauthorized radio station. Mr. Polynice apparently actively promoted and broadcast the programming for the illegal radio transmissions, while the Sidos provided free access to their property for Mr. Polynice and otherwise supported, participated in, and acquiesced to the unlicensed radio station’s operation.

2. Unlicensed radio stations—also known as pirate radio stations—operate illegally, undermine the Commission’s efforts to manage radio spectrum, and can interfere with licensed communications, including authorized broadcasts and public safety transmissions. Like the case here, some of the most egregious pirate radio operations are run by multiple individuals who simply ignore repeated enforcement actions by the Commission and the Justice Department. Such cases merit the strongest possible enforcement measures.

3. Since 2012, Mr. Polynice and the Sidos have received numerous Commission warnings that operation of an unlicensed radio station was illegal and that continued operation of it could result in further enforcement action. These warnings included Notices of Unauthorized Operation (NOUOs) that each contained the directive, “unlicensed operation of this radio station must be discontinued immediately.”¹ In July 2012, after an initial NOUO had been issued to the Sidos, U.S. Marshals executed a warrant to seize equipment for a pirate radio station that was housed in a shed in the Sidos’ backyard.

¹ *Harold Sido, Veronise Sido*, Notice of Unlicensed Operation (EB Mar. 14, 2012) (on file in EB-FIELDSCR-12-00001351); *Harold Sido, Veronise Sido, Fabrice Polynice*, Notice of Unlicensed Operation (EB Mar. 6, 2015) (on file in EB-FIELDSCR-15-00018596); *Harold Sido, Veronise Sido*, Notice of Unlicensed Operation (EB Aug. 17, 2015) (on file in EB-FIELDSCR-15-00018596); *Harold Sido, Veronise Sido*, Notice of Unlicensed Operation (EB Dec. 13, 2016) (on file in EB-FIELDSCR-15-00018596). The Sidos have not responded to any of these NOUOs.

Later in 2012 and 2013, respectively, the Enforcement Bureau (Bureau) issued a Notice of Apparent Liability for Forfeiture and a Forfeiture Order that sanctioned Mr. Polynice for operating the unlicensed radio station.² Nonetheless, since 2012, Commission field agents have detected Mr. Polynice's unauthorized broadcast operations on seven additional occasions, five of which occurred after the Bureau issued him an additional NOUO for unauthorized radio station operation.³ The Sidos apparently have also continued to jointly engage in the operation of the unlicensed radio station that transmits Mr. Polynice's programming after clear notice to them of its illegality, by providing a facility for the station's operation and other critical support for it.

4. Even the aforementioned seizure of their pirate station broadcast equipment did not deter Mr. Polynice and the Sidos from their apparent continuing unlawful operations, as agents from the Miami Office observed unauthorized radio transmissions emanating from the Sido residence on seven additional occasions, including as recently as December 2016. Due to the repeated and egregious nature of their actions, the operation of an unlicensed FM radio station by Mr. Polynice, Mr. Sido and Mrs. Sido, in apparent violation of the Act, warrants the proposed forfeiture of \$144,344, the maximum permitted under the Act for such continuing violations. Moreover, for the reasons noted herein, we conclude that Mr. Polynice, Mr. Sido, and Mrs. Sido are apparently jointly and severally liable for this proposed forfeiture.

II. BACKGROUND

5. Mr. Polynice, Mr. Sido, and Mrs. Sido appear to have jointly engaged in the longstanding illicit operation of an unauthorized radio station in North Miami, Florida. Mr. Polynice apparently provided the programming for the illegal radio broadcasts, which he appears to have actively promoted. The Sidos provided Mr. Polynice free access to their property—which included the shed used for the operation of the station—as well as electrical power and the Internet connection necessary to broadcast the station. Further, there is evidence that on at least one occasion Mr. Sido was also present when Mr. Polynice provided programming to the station.

6. Mr. Polynice and the Sidos have apparently participated in this enterprise fully aware that it was illegal, in part because they have each been subject to previous Commission enforcement actions for operation of unauthorized broadcast stations. On March 14, 2012, agents from the Miami Office used mobile direction-finding techniques to determine that FM radio transmissions on 90.1 MHz were originating from the Sido residence. They took field strength measurements of the station's signal and determined that the transmissions on 90.1 MHz exceeded the limits for unlicensed low power operations under Part 15 of the Commission's rules, and therefore required a license. The agents consulted the Commission's records and confirmed that no authorization had been issued for the operation of an FM broadcast station at or near that residence. The agents issued a NOUO to the Sidos directing them to "immediately discontinue" operating the unlicensed radio station on 90.1 MHz, and warning that continued unlicensed operation could result in additional enforcement action.⁴ The agents later observed unlicensed operations at the Sido residence again on May 9, June 13, and July 3, 2012.

7. As a result of those observations, the U.S. Marshals Service executed an *in rem* warrant at the Sido residence on July 5, 2012, seizing the radio equipment used for the unauthorized transmissions

² See *Fabrice Polynice*, Notice of Apparent Liability for Forfeiture, 27 FCC Rcd 15079 (EB 2012) (*Polynice NAL*), *Fabrice Polynice*, Forfeiture Order, 28 FCC Rcd 4297 (EB 2013) (*Polynice Forfeiture Order*) (imposing a \$25,000 forfeiture for unlicensed radio station operation on six different days from July to December, 2012), *recon. denied*, *Fabrice Polynice*, Memorandum Opinion and Order, 31 FCC Rcd 9625 (EB 2016). To date, Mr. Polynice has not paid the forfeiture.

³ *Harold Sido, Veronise Sido, Fabrice Polynice*, Notice of Unlicensed Operation (EB Mar. 6, 2015) (on file in EB-FIELDSCR-15-00018596).

⁴ *Harold Sido, Veronise Sido*, Notice of Unlicensed Operation (EB Mar. 14, 2012) (on file in EB-FIELDSCR-12-00001351).

located in a shed in the Sidos' backyard.⁵ Agents from the Commission's Miami Office who accompanied the U.S. Marshals observed a laptop computer in the shed with an audio play list with "Radio Touche Douce" in the name. They also observed computer file folders with MP3 files with the name "Paz." The Miami agents have determined that Mr. Polynice refers to his unauthorized station as "Radio Touche Douce," and refers to himself as "Paz" during the illegal broadcasts.⁶ Subsequently, Mr. Polynice was the subject of the *Polynice NAL* in December 2012⁷ and, in 2013, the *Polynice Forfeiture Order*⁸ in which the Commission fined him \$25,000 for operating an unauthorized radio station on six different days at three different locations, including the Sido residence on the four days monitored by the Commission agents as noted above.⁹ To date, Mr. Polynice has not paid the forfeiture.

8. On August 17, 2015, agents from the Miami field office again visited the Sido residence. After taking field strength measurements that showed that unauthorized radio transmissions were taking place, the agents encountered the Sidos outside the residence. The agents interviewed both Mr. Sido and Mrs. Sido and orally warned them of the unlicensed operation. Mrs. Sido initially denied the radio station was there, but then admitted the station's antenna and structure were in the Sidos' backyard. She also acknowledged that the station had been there before, and advised that it belonged to someone named "Paz." In the backyard, the agents observed a coaxial cable running from the antenna to the bottom of the antenna structure, and then buried in the ground. The agents also observed what appeared to be an AC power line running from the shed to the Sido residence. The shed from which radio station equipment was seized during the 2012 *in rem* seizure was still located in the backyard. An agent heard what sounded like electrical equipment hum coming from inside the shed. The agents mentioned this fact to Mr. Sido and Mrs. Sido. About two minutes later, the sound ceased and the agents used a portable FM radio to determine that the carrier signal on 90.1 MHz was no longer transmitting.

9. The agents determined that Mr. Polynice had apparently provided the programming for the unlicensed radio station operating from the Sido residence. As noted above, when the agents interviewed Mrs. Sido on August 17, 2015, she identified someone named "Paz" as the owner of the equipment. Based on the record for the *Polynice Forfeiture Order*, Mr. Polynice admitted he was DJ "Paz" and had developed the "Radio Touche Douce" brand, although he denied that he operated an illegal radio station.¹⁰ Field agents have heard broadcasts from the station transmitting from the Sido property refer to the station as "Radio Touche Douce," and recorded those unlicensed broadcasts on five occasions in 2015 and 2016.¹¹

⁵ In addition to the four times that agents from the Miami Office observed these unauthorized operations from March 12 to July 3, 2012, discussed above, the agents also observed these unauthorized operations on July 5, 2012, immediately prior to the seizure of the radio equipment.

⁶ *Polynice NAL*, 27 FCC Rcd at 15080-81, paras. 3-4.

⁷ See *Polynice NAL*, 27 FCC Rcd 15079.

⁸ See *Polynice Forfeiture Order*, 28 FCC Rcd 4297.

⁹ Those four days were March 14, May 9, June 13, and July 3, 2012. See *Polynice NAL*, 27 FCC Rcd at 15079, n.2. Property records from the Miami-Dade County, Florida, Office of the Property Appraiser state that Veronise Sido owns the residence at which the transmitter is currently located (official notice taken). Mr. Sido and Mrs. Sido previously told agents that they both live at this residence.

¹⁰ *Polynice Forfeiture Order*, 28 FCC Rcd at 4297, para. 4.

¹¹ The recordings were made on January 22, July 21, August 17 and 26, 2015, and June 7, 2016. (On file in EB-FIELDSCR-15-00018596). Four of those recordings were made after the agents had issued a warning of unlicensed operation to Mr. Polynice. See *Harold Sido, Veronise Sido, Fabrice Polynice*, Notice of Unlicensed Operation (EB Mar. 6, 2015) (on file in EB-FIELDSCR-15-00018596). Also, agents observed and measured these unauthorized operations on December 4, 2013, and December 6, 2016.

10. A review of the public social media accounts of Mr. Polynice and Mr. Sido provides further evidence of their apparent violations. One Radio Touche Douce Facebook page identifies Mr. Polynice as the owner of Radio Touche Douce.¹² Another Radio Touche Douce Facebook page includes Mr. Polynice's picture, and encourages people to tune in to "RadioToucheDouce 90.1 FM" in Miami.¹³ Moreover, in September 2014, Mr. Sido posted a video on his Facebook page showing him with Mr. Polynice at the station's studio as Mr. Polynice is talking into a microphone in the background.¹⁴ Mr. Sido reposted that video to his Facebook page in December 2016, which provides further evidence that Mr. Sido is aware of Mr. Polynice's radio programming, that Mr. Sido was present during the course of such use and operation, and that he has a personal and/or professional relationship with Mr. Polynice.

11. On December 6, 2016, Miami Office agents used mobile direction-finding techniques to determine that radio transmissions on 90.1 MHz were once again originating from the Sido residence. The agents recognized the audio programming on 90.1 MHz FM as that of Mr. Polynice. The agents again took field strength measurements of the station's signal and determined that the FM radio transmissions on 90.1 MHz exceeded the limits for unlicensed operation under Part 15 of the Commission's rules, and therefore required a license. Within ten minutes after taking the measurements, the agents knocked on the Sidos' door to interview them. About ten minutes after the agents began knocking on the door, the Sidos answered the door. In response to the agents' questions, both denied that a radio station was operating from their residence. The Sidos brought the agents to the backyard where the agents observed the shed, antenna mast, and antenna coaxial cable that ran down towards the ground. When asked about the lock that the agents observed on the shed, the Sidos informed the agents that only they possess keys to the lock. Mr. Sido unlocked the shed and allowed the agents inside. The agents observed that the shed was dark, and so they could not determine whether it contained the transmitter or other radio transmitting equipment that they heard before they started the site inspection. Mr. Sido told the agents that no lights were available in the shed, claiming that there were none because of a problem with the breaker that controls power to the shed. In response to an agent's questions, he stated that the Sidos received a consolidated electric bill that covered power provided to the house and shed, that the property had only one Internet account, and that the Sidos paid those bills. When the agents inquired about the nature of Sidos' relationship with Mr. Polynice, they asserted that they had not seen him in two years. When the agents asked about the unlicensed transmitter, the Sidos alternately refused to respond or claimed that no radio transmitter had been operated on their property since the 2012 *in rem* seizure. The agents did not see anyone else on the property at any time during their investigation. As had occurred during the August 2015 site visit, the station had been taken off the air when the agents took further field strength measurements immediately after the Sido interview ended.¹⁵

¹² *Polynice Forfeiture Order*, 28 FCC Rcd at 4298-99, para. 4.

¹³ *Id.*

¹⁴ <https://www.facebook.com/sido.harold> (last accessed April 5, 2017). The agents did not see any studio equipment, such as microphones or music-playing equipment, in the Sidos' shed. However, the video provides evidence that while the Sidos' shed contains the equipment needed to broadcast the unauthorized station's signal, the studio where Mr. Polynice originates its content is at another location.

¹⁵ The agents concluded that Mr. or Mrs. Sido turned off the equipment during the ten minutes from the time the agents first knocked on their door and when the Sidos answered it, or that Mr. Sido turned off or moved the equipment during the five or so minutes that Mrs. Sido talked to the agents before Mr. Sido presented himself at the door.

III. DISCUSSION

A. Mr. Fabrice Polynice

12. We find that Mr. Polynice apparently violated Section 301 of the Act.¹⁶ 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 this Act and with a license in that behalf granted under the provisions of this Act.” As noted above, the Bureau previously found Mr. Polynice liable for operating an unlicensed radio station in North Miami, in 2013.¹⁷ Since that time, the Commission’s agents found repeatedly that an unauthorized radio station was being operated from the Sido property on 90.1 MHz at a level of power that required a Commission authorization. The evidence establishes that Mr. Polynice was apparently one of the people operating that station by providing programming, promoting the station, announcing, and making public and commercial contact possible by providing station contact information. For example, on six occasions from January 22, 2015, through December 6, 2016, the agents recognized the audio programming on 90.1 MHz FM in North Miami, Florida as the station “Radio Touche Douce.” The agents made five of those observations after the Commission had issued a written warning to Mr. Polynice that such unlicensed operations violated the Act and must cease at once.¹⁸ Mr. Polynice has previously admitted to the Commission that he developed the brand name “Touche Douce” and is “DJ Paz.”¹⁹ On his Facebook webpage, Mr. Polynice affirmatively states that he is the owner of Radio Touche Douce. Mr. Polynice has posted pictures of himself on the Radio Touche Douce Facebook page, which also has promotional posts that state he is “live on the air” on station 90.1 FM and encourages people to “tune in.”²⁰ Further, Mr. Polynice’s personal phone number is advertised as the number of the station.²¹ The August 26, 2015 broadcast program recorded by the agents announced that “DJ Paz” was on the air.²²

13. We find that Mr. Polynice’s apparent violation of Section 301 was willful within the meaning of Section 503(b)(1)(B) of the Act.²³ Section 503(b) of the Act provides that any person who 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.²⁴ Section 312(f)(1) of the Act defines “willful” as the “conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate” the law.²⁵ Because Mr. Polynice consciously operated the station, the apparent violation of the Act was willful. We therefore conclude that Mr. Polynice apparently willfully violated Section 301 of the Act by operating radio transmission equipment without the required Commission authorization.

B. Mr. and Mrs. Harold and Veronise Sido

14. We also find that Mr. Sido and Mrs. Sido each apparently willfully violated Section 301 of the Act. As noted above, Section 301 of the Act states that no person shall use or operate any

¹⁶ 47 U.S.C. § 301.

¹⁷ *Polynice Forfeiture Order*, 28 FCC Rcd at 4298-99, para. 4.

¹⁸ *Harold Sido, Veronise Sido, Fabrice Polynice*, Notice of Unlicensed Operation (EB Mar. 6, 2015) (on file in EB-FIELDSCR-15-00018596).

¹⁹ *Polynice Forfeiture Order*, 28 FCC Rcd at 4297, para. 2.

²⁰ *Id.*

²¹ *Id.*

²² *See supra* paras. 7, 9-10 (discussing the identity of “Paz”).

²³ 47 U.S.C. § 503(b)(1)(B).

²⁴ 47 U.S.C. § 503(b).

²⁵ 47 U.S.C. § 312(f)(1).

apparatus for the transmission of energy or communications or signals by radio within the United States without a license granted by the Commission. Based on the totality of the circumstances set forth below, we find that the Sidos were apparently engaged, with Mr. Polynice, in the continuing operation and/or use of the North Miami unlicensed radio station. We reach this conclusion based on a number of factors, including the relationship between Mr. Polynice and the Sidos, and their apparent use and/or operation of the unauthorized station.

15. First, it appears that Mr. Sido and Mrs. Sido used or operated the FM transmitter, in part because the Sidos alone control the access to the transmitter and antenna. Because of their exclusive access over their single-family residence, its yard, and its shed, they act as gatekeepers who can grant or exclude others from the shed and the yard, as they did with the Commission field agents. The Sidos keep the shed that houses the station equipment locked, and they claim they are the only people with a key to open it. Moreover, the field strength measurements taken immediately prior to the December 6, 2016 inspection of the Sido residence showed that the unauthorized station continued to operate on the Sido property, notwithstanding Mrs. Sido's denials. The fact that the agents did not see the transmitter in the shed during that inspection indicates that the Sidos either moved, or allowed others to move, the transmitter out of plain sight, but left it elsewhere on their property and connected to the antenna for broadcasting. The Sidos' apparent removal of the station from the air after visits in 2015 and 2016 by the Miami Office agents also confirms their apparent control over the station's operation.²⁶

16. Second, additional factors support the conclusion that the Sidos apparently engaged in the operation and/or use of the pirate radio station. For instance, the Sidos supply the Internet connection to the unauthorized transmitter on their property. This Internet service is necessary to carry the programming for this unauthorized station from where it originates to the radio transmitter. The bill for Internet service is in the Sidos' name, and the Sidos pay for the Internet connection to the antenna and the transmitter. Moreover, Mr. Sido and Mrs. Sido arranged and pay for the electrical power necessary for the station and transmitter and other equipment to operate. The bill for electrical services is in the Sidos' name. In addition, the Sidos have an electrical breaker on the electrical circuit to the shed that allows them to halt the supply of electricity to the shed at will. Similarly, Mr. Sido and Mrs. Sido continued to provide access to the site on which the antenna, transmitter, and coaxial cable used by the unauthorized station are located. As noted above, the agents determined on twelve occasions from 2012 to 2016, that the Sidos were providing the space for this unauthorized station.²⁷

17. Also, as stated above, on September 14, 2014, Mr. Sido posted a video on his Facebook account apparently showing that he was present at the studio with Mr. Polynice during the illegal operation of the station. That video, reposted by Mr. Sido in December 2016, demonstrates that Mr. Polynice and Mr. Sido know each other and that Mr. Sido knows Mr. Polynice broadcasts audio programming. Mr. Sido's video, combined with the monetary support that the Sidos apparently provide the station in the form of free Internet service, free electrical service, and free storage for and access to the broadcast equipment; and the numerous times they have been warned or otherwise put on notice that the operation of a station without a license is unlawful, all support the conclusion that they were actively involved in the operation of an unauthorized FM radio transmitter. Taken together, these facts reflect their apparent knowledge of and participation in the pirate radio operation, which they knew or should have known was illegal. In this regard, we observe that Mr. Sido first posted the video that apparently shows Mr. Polynice and Mr. Sido engaging in unauthorized radio transmission over two years after having been advised by the Bureau in the March 14, 2012 NOUO that the station operation was illegal and should cease immediately, and having illegal equipment removed by the *in rem* seizure of the station

²⁶ See *supra* paras. 8 and 11.

²⁷ See *supra* notes 5 and 11.

equipment from the Sido residence on July 5, 2012. Commission staff recently confirmed that the video remains available on Mr. Sido's Facebook page.²⁸

18. Considering the totality of all the circumstances discussed above, we conclude that Mr. Sido and Mrs. Sido apparently willfully participated in these illegal activities, despite the repeated directives of Commission field agents for five years that the operation of the station was illegal and must be discontinued immediately. Notwithstanding this repeated instruction from the agents, the Sidos appear to have willingly provided access to their property and services vital to the broadcast of the station, on terms that are inconsistent with those of a standard landlord-tenant relationship. Moreover, the Sidos have admitted that they pay for electricity and internet service which allows the station to transmit. These activities enable the illegal station to operate. Under these circumstances, we conclude that, by virtue of their support of, participation in, and acquiescence to the pirate radio operation, they too are each apparently liable for the forfeiture proposed herein.

C. Joint and Several Liability

19. As discussed above, we find that Mr. Polynice, Mr. Sido, and Mrs. Sido are each apparently liable for unauthorized operation under Section 301. The Commission has found in previous enforcement cases that joint and several liability was warranted where more than one party was responsible for a particular violation.²⁹ We find that such joint and several liability is appropriate here, in light of the Sidos' apparent support of, participation in, and acquiescence to the unauthorized station at issue here.³⁰

D. Proposed Forfeiture Amount

20. 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.³¹ Here, Section 503(b)(2)(D) of the Act authorizes us to assess a forfeiture of up to \$19,246 for each day of a continuing violation, up to a statutory maximum of \$144,344 for a single act or failure to act.³² In exercising our forfeiture authority, we must consider the "nature, circumstances, extent, and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require."³³ In addition, the Commission has established forfeiture guidelines; they establish base penalties for certain violations and identify criteria that we consider when determining the appropriate penalty in any given case.³⁴ Under these guidelines, we may adjust a forfeiture upward for violations that are egregious, intentional, or repeated, or that cause substantial harm or generate substantial economic gain for the violator.³⁵

²⁸ <https://www.facebook.com/sido.harold> (last accessed April 5, 2017).

²⁹ *Telseven, LLC and Patrick B. Hines*, Forfeiture Order, 31 FCC Rcd 1639 (2016); *Scott Malcolm*, Forfeiture Order, 31 FCC Rcd 1652 (2016). Such liability "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." *Andre Alleyne, Jesse White*, Forfeiture Order, 26 FCC Rcd 10372, 10374, para. 8 (EB 2011).

³⁰ *See supra* Section III.B.

³¹ 47 U.S.C. § 503(b).

³² *See* 47 U.S.C. § 503(b)(2)(D); 47 CFR §§ 1.80(b)(7), (9); *see also Jay Peralta, Corona, New York*, Notice of Apparent Liability for Forfeiture, 32 FCC Rcd 3246, 3250 n.30 (2017) (*Peralta NAL*) (discussing inflation adjustments to the forfeitures specified in Section 503(b)(2)(D)).

³³ 47 U.S.C. § 503(b)(2)(E).

³⁴ 47 CFR § 1.80(b)(8), Note to paragraph (b)(8).

³⁵ *Id.*

21. Section 503(b)(6) of the Act empowers the Commission to assess forfeitures for violations that occurred within the year preceding the issuance of a Notice of Apparent Liability for Forfeiture. Section 1.80(b) of the Commission's rules sets a base forfeiture of \$10,000 for construction or operation without an instrument of authorization for the service.³⁶ We have discretion, however, to depart from these guidelines, taking into account the particular facts of each individual case.³⁷ Here, the facts justify a substantial penalty. Over the past five years, the Commission has documented at least 12 occasions of Mr. Polynice's apparently illegal radio transmissions from the Sido residence.³⁸ Each party received repeated oral and written warnings about illegal operation over the five-year period. These warnings informed Mr. Polynice, Mr. Sido, and Mrs. Sido that unlicensed operation of a radio station violated the law and could subject them to further enforcement action, including monetary forfeitures. In 2012, the U.S. Marshals Service seized the radio transmitting equipment located on the Sido property.³⁹ That same year, the Bureau found Mr. Polynice apparently liable for a \$25,000 forfeiture due to his unlicensed radio station operation, and affirmed that finding the following year with a forfeiture order.⁴⁰

22. Even these actions, however, did not deter Mr. Polynice, Mr. Sido, or Mrs. Sido from apparently continuing their illegal radio operations. As discussed above, in December 2016 Commission agents found that the illegal station was still apparently being operated by Mr. Polynice and Mr. and Mrs. Sido, from the Sido residence. That same month, Mr. Sido reposted a video on Facebook showing him sitting next to Mr. Polynice while Mr. Polynice was speaking into a microphone in a radio studio, providing further evidence that at least Mr. Sido and Mr. Polynice knew each other, and that Mr. Sido was aware that Mr. Polynice is a DJ that provides audio programming from a studio. These facts apparently confirm that the Sidos knew they were providing access to their residence, Internet, and power, for a radio station. If the Sidos had not been aware of the station's illegal status initially, they were put on notice the first of the twelve times that the Commission agents informed them that such operation was illegal and must cease. The fact that the unlicensed operations have apparently continued, in spite of those numerous warnings, provides evidence of all three parties' apparent deliberate disregard for the Commission's authority and requirements.

23. Given the duration of this apparent violation of Section 301 of the Act, coupled with the disregard of the Commission's multiple express warnings to cease operating, we propose a base forfeiture of \$10,000 for each day the station was apparently operated by Mr. Polynice and Mr. and Mrs. Sido between September 27, 2016 and December 6, 2016. This results in a total proposed base forfeiture amount of \$710,000.⁴¹ However, because Section 503(b)(2)(D) of the Act imposes a maximum penalty

³⁶ *Id.*

³⁷ See *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087, 17098-99, para. 22 (1997) (noting that "[a]lthough we have adopted the base forfeiture amounts as guidelines to provide a measure of predictability to the forfeiture process, we retain our discretion to depart from the guidelines and issue forfeitures on a case-by-case basis, under our general forfeiture authority contained in Section 503 of the Act") (*Forfeiture Policy Statement*), *recons. denied*, Memorandum Opinion and Order, 15 FCC Rcd 303 (1999).

³⁸ Specifically, Commission agents measured the illegal transmissions five times in 2012, and an additional seven times from December 2013 to December 2016. See *supra* notes 5 and 11.

³⁹ See *United States vs. Any and All Radio Station Equipment, et al.*, Case No. 12-CV-22249 (S.D. Fla., 2012).

⁴⁰ See *Polynice Forfeiture Order*, 28 FCC Rcd at 4298-99, para. 4.

⁴¹ The base forfeiture was calculated by reasoning that, based on the Sidos' and Polynice's operating history described in detail above, they operated the illegal station every day between June 7 and December 6, 2016, the last two of the Commission Agents' numerous observations of the illegal operation of a station broadcasting from the Sido property on 90.1 MHz. Commission precedent permits consideration of acts beyond the statute of limitations "in order to establish the violator's degree of culpability and the continuing nature of the violations." *Life on the Way Communications, Inc.*, Forfeiture Order, 30 FCC Rcd 2603 (2015) (emphasis added). In this case, the number of days used to multiply the base forfeiture of \$10,000 for the continuing violation was reduced to reflect only the 71 (continued....)

for continuing violations arising from a single act or failure to act, we must reduce the total proposed forfeiture amount to \$144,344, the maximum amount so allowed.⁴²

24. Further, we conclude that because the violations in this case are egregious, intentional and repeated, a significant increase to the base forfeiture would be warranted if the proposed forfeiture amount was not already at the statutory maximum. The fact that Mr. Polynice and Mr. and Mrs. Sido apparently continued to operate an unlicensed FM station after U.S. Marshals previously seized similar radio station equipment from the Sido property—despite Mr. Polynice’s previous conviction under state law for illegal operation of a radio station, and even though Mr. Polynice had already been the subject of a prior Forfeiture Order for illegal operation of a radio station—is evidence of their egregious, deliberate, and troubling disregard for the Commission’s authority and requirements.⁴³ In addition, the length of time that Mr. Polynice, Mr. Sido, and Mrs. Sido apparently operated the station after the Bureau issued them multiple warnings highlight the repeated nature and duration of their apparent violations.⁴⁴ As discussed herein, over the past five years, FCC field agents have documented the operation of the unlawful pirate radio station on multiple occasions, including as recently as December 6, 2016.⁴⁵ However, because the apparent violation of Section 301 of the Act constitutes a single, ongoing violation, we do not have the ability to impose upward adjustments beyond the maximum penalty (\$144,344) that Congress has authorized.

25. After applying the *Forfeiture Policy Statement*, Section 1.80 of the Commission’s rules, and the statutory factors, we find that Mr. Polynice, Mr. Sido and Mrs. Sido are jointly and severally apparently liable for the statutory maximum penalty for a single continuing violation and propose a forfeiture of \$144,344.

IV. ORDERING CLAUSES

26. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Act⁴⁶ and Section 1.80 of the Commission’s rules,⁴⁷ Fabrice Polynice, Harold Sido, and Veronise Sido are hereby

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that fall within the one-year statute of limitations (September 26 – December 6, 2016). Calculation of a forfeiture for unauthorized station operation under Section 301 in this manner is consistent with Commission precedent. *Vearl Pennington, Morehead, Kentucky and Michael Williamson, Morehead, Kentucky*, Notice of Apparent Liability for Forfeiture, 32 FCC Rcd 4206 (2017).

⁴² 47 U.S.C. § 503(b)(2)(D). *See supra* note 32 (adjustment of statutory limits to reflect inflation).

⁴³ *See, e.g., Gateway Security Systems, Inc.*, Forfeiture Order, 18 FCC Rcd 24026 (EB 2003), citing *WWC Licensee LLC*, Forfeiture Order, 16 FCC Rcd 19490, 19492, para. 9 (2001) (finding that illegal operation on microwave frequencies “was not as egregious as that of a ‘pirate’ operator. For this reason, we have not treated WWC’s unauthorized operation the same as a ‘pirate’ operation...”).

⁴⁴ *See, e.g., Union Oil Co. of Cal.*, Notice of Apparent Liability for Forfeiture 27 FCC Rcd 13806, 13810-11, paras. 10-11 (2012) (upward adjustment of over three times the base forfeiture warranted because of extended duration of the violation); *Midessa Television Ltd. P’ship*, Notice of Apparent Liability for Forfeiture, 29 FCC Rcd 13247, 13250-51, para. 11 (2014) (upward adjustment for the base forfeiture because of extended duration of the violation).

⁴⁵ *Dialing Services, LLC*, Notice of Apparent Liability, 29 FCC Rcd 5537, 5548, para. 27 (2014). *See also Robert Brown*, Memorandum Opinion and Order, 27 FCC Rcd 6975 (EB 2012), *aff’d*, Forfeiture Order, 26 FCC Rcd 6854 (EB 2011), *aff’d*, Notice of Apparent Liability for Forfeiture, 25 FCC Rcd 13740 (EB 2010) (upwardly adjusted proposed forfeiture because violator operated an unlicensed radio station after receiving a written warning that such action violated the Act and Commission’s rules); *Lloyd Morris*, Memorandum Opinion and Order, 27 FCC Rcd 6979 (EB 2012), *aff’d*, Forfeiture Order, 26 FCC Rcd 6856 (EB 2011), *aff’d*, Notice of Apparent Liability for Forfeiture, 25 FCC Rcd 13736 (EB 2010) (same).

⁴⁶ 47 U.S.C. § 503(b).

⁴⁷ 47 CFR § 1.80.

NOTIFIED of their **APPARENT JOINT AND SEVERAL LIABILITY FOR A FORFEITURE** in the amount of one hundred forty-four thousand three hundred forty-four dollars (\$144,344) for their willful and repeated violations of Section 301 of the Act.⁴⁸

27. **IT IS FURTHER ORDERED** that, pursuant to Section 1.80 of the Commission's rules, within thirty (30) calendar days of the release date of this Notice of Apparent Liability for Forfeiture, Fabrice Polynice, Harold Sido, and Veronise Sido **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture consistent with paragraphs 30 and 31 below.

28. Payment of the forfeiture must be made by check or similar instrument, wire transfer, or credit card, and must include the NAL/Account Number and FRN referenced above. Fabrice Polynice, Harold Sido and Veronise Sido shall send electronic notification of payment to Janet Moran at janet.moran@fcc.gov on the date said payment is made. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted.⁴⁹ When completing the FCC Form 159, enter the Account Number in block number 23A (call sign/other ID) and enter the letters "FORF" in block number 24A (payment type code). Below are additional instructions that should be followed based on the form of payment selected:

- Payment by check or money order must be made payable to the order of the Federal Communications Commission. Such payments (along with the completed Form 159) must be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.
- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. To complete the wire transfer and ensure appropriate crediting of the wired funds, a completed Form 159 must be faxed to U.S. Bank at (314) 418-4232 on the same business day the wire transfer is initiated.
- Payment by credit card must be made by providing the required credit card information on FCC Form 159 and signing and dating the Form 159 to authorize the credit card payment. The completed Form 159 must then be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.

29. Any request for making full payment over time under an installment plan should be sent to: Chief Financial Officer—Financial Operations, Federal Communications Commission, 445 12th Street, SW, Room 1-A625, Washington, DC 20554.⁵⁰ Questions regarding payment procedures should be directed to the Financial Operations Group Help Desk by phone, 1-877-480-3201, or by e-mail, ARINQUIRIES@fcc.gov.

30. The written statement seeking reduction or cancellation of the proposed forfeiture, if any, must include a detailed factual statement supported by appropriate documentation and affidavits pursuant to Sections 1.16 and 1.80(f)(3) of the Commission's rules.⁵¹ The written statement must be mailed to the Secretary, Federal Communications Commission, 445 12th Street, SW, Washington, DC 20554, ATTN:

⁴⁸ 47 U.S.C. § 301.

⁴⁹ An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

⁵⁰ See 47 CFR § 1.1914.

⁵¹ 47 CFR §§ 1.16, 1.80(f)(3).

Enforcement Bureau –Office of the Field Director, and must include the NAL/Account Number referenced in the caption. The statement must also be e-mailed to janet.moran@fcc.gov.

31. 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; 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.

32. **IT IS FURTHER ORDERED** that copies of this Notice of Apparent Liability for Forfeiture shall be sent by first class mail and certified mail, return receipt requested, to Fabrice Polynice, Harold Sido and Veronise Sido at their addresses of record.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

**STATEMENT OF
CHAIRMAN AJIT PAI**

Re: *Fabrice Polynice, North Miami, FL, File No. EB-FIELDSCR-13-00012949; Harold Sido and Veronise Sido, North Miami, FL, File No. EB-FIELDSCR-15-00018596.*

One week ago today was International Talk Like a Pirate Day, which is probably the only holiday that can trace its origin to a racquetball game. When the two co-founders were playing, one of them suffered an injury and screamed out “Aaarr!” One thing then led to another, and a day of light-hearted commemoration was born.

By contrast, there’s nothing funny about pirate radio, which interferes with the lawful use of the airwaves and can disrupt public safety communications. Since becoming Chairman, I’ve made it quite clear that the FCC won’t tolerate the unauthorized and illegal use of the radio spectrum. Towards that end, I’ve made it a Commission priority to crack down on pirate radio operations. And with today’s action, we again back up these words with action.

For at least five years now, it appears that Mr. Polynice and the Sidos have jointly engaged in the illicit operation of a radio station in North Miami, Florida. On numerous occasions since 2012, the Commission has warned these individuals that operation of an unlicensed radio station is illegal, and that continued operation could result in further enforcement action. And in 2012, the Justice Department even seized the parties’ radio broadcast equipment from a shed in the Sidos’ backyard. But Mr. Polynice and the Sidos appear to have ignored each of these measures.

Specifically, it appears that Mr. Polynice continued to provide the programming for the unauthorized station and to publicly promote its operations. And it appears that the Sidos authorized the installation and operation of the FM broadcast station in the backyard of their residence and provided material support in the form of use of their property, their electricity, and their Internet connection, all of which are necessary precursors to successful operation of the illegal station.

This conduct is unacceptable. So we propose to hold these individuals jointly and severally liable for the maximum fine allowed under the Communications Act. With this action, we send a clear message to all pirate operators far and wide that we will use the strongest enforcement tools within our disposal to end this illegal practice.

Commissioner O’Rielly has consistently advocated for the Commission to do more to combat pirate radio operations, and I would like to thank him for his commitment to this cause. I’d also like to thank the staff of the Enforcement Bureau, including Charles Cooper, Jennifer Epperson, Rosemary Harold, Jeremy Marcus, Janet Moran, Phil Rosario, and Steven Spaeth, as well as the tireless FCC agents in the field, some of whom I had the chance to meet last week in Florida, for your diligent work on this matter. You are critical to the Commission’s ongoing efforts to combat harmful interference and protect and manage the radio spectrum, especially for those with valid FCC licenses.

**STATEMENT OF
COMMISSIONER MIGNON L. CLYBURN**

Re: *Fabrice Polynice, North Miami, FL, File No. EB-FIELDSCR-13-00012949; Harold Sido and Veronise Sido, North Miami, FL, File No. EB-FIELDSCR-15-00018596.*

Over the past 14 years, the FCC has taken enforcement action nearly 2,000 times against pirate radio operators. An estimated three-fourths of these cases can be attributed to five states: California, Florida, Massachusetts, New Jersey and New York. The case before us today, like many this agency has seen before, presents a set of facts that are overwhelmingly convincing when it comes to a show of liability. Mr. Fabrice Polynice, Mr. Harold Sido and Mrs. Veronise Sido, have been warned, cited and visited numerous times by multiple agents. One visit in 2012, even resulted in the seizure of equipment by the U.S. Marshals Service and in 2013, a \$25,000 forfeiture order was issued. This leaves me with little doubt that the three knowingly, repeatedly and willfully violated FCC rules by failing to cease operation of an unlicensed radio station.

I support taking a strong stand against pirate radio operators, including in this case where we have proposed the statutory maximum forfeiture of \$144,344. We target these operators not simply because they violate FCC rules, but because the unlicensed operation of a broadcast station could disrupt emergency communications and result in harmful interference to nearby licensed stations.

While there is absolutely no justification for pirate radio operation, the proliferation of these stations should spark the question: are there specific FCC policies that are incentivizing individuals to choose the route of operating an unlicensed broadcast radio station? I ask this question because many pirate radio stations broadcast content that is targeted to minority communities that are otherwise underrepresented by other forms of media. According to U.S. Census data, there are 213,000 foreign-born Haitians living in the Miami/Fort Lauderdale area. This represents nearly 4% of the metro area population yet, research by my staff found just a single FM station serving the Haitian community of the almost 60 FM stations in south Florida.

If these unlicensed operators were ever afforded the opportunity to transition to a licensed station, would they take it? Unfortunately, in most large media markets, that opportunity may never exist, both because of the lack of an available license and high financial hurdles. Among the policies this Commission should consider include finding ways to replicate and enhance the success of low-power FM (LPFM) stations; establishing a pilot incubator program; and when divestitures are required during merger transactions, we should urge the parties to strongly consider offers from women and minority business owners. Additionally, I continue to support the reinstatement of a tax certificate program focused on improving the state of broadcast ownership diversity.

But I will end my official statement the way in which I began: pirate radio stations are illegal. The FCC and other enforcement authorities have an obligation to ensure that unauthorized stations are taken and kept off the air. I thank the Enforcement Bureau staff, for their ongoing efforts to protect our airwaves, and hope that we can initiate a simultaneous conversation on how to create more opportunities for women and minorities to legally enter the broadcast space.

**STATEMENT OF
COMMISSIONER MICHAEL O'RIELLY**

Re: Fabrice Polynice, North Miami, FL, File No. EB-FIELDSCR-13-00012949; Harold Sido and Veronise Sido, North Miami, FL, File No. EB-FIELDSCR-15-00018596.

I generally withhold from making comments on Notices of Apparent Liability (NAL). Here, I will make an exception since it focuses on an area that I have spent a considerable amount of time and energy.

I applaud Chairman Pai's directive to the Enforcement Bureau that they actually enforce the law and the Commission's rules as they pertain to pirate radio broadcasting. The previous Commission leadership had a much different approach that was both destructive and misguided. I thank the Bureau's field office staff for their renewed enthusiasm to stop current pirate radio "stations" and prevent new ones from forming. I also appreciate the scope of this NAL in that it seeks to go after the actual landlords housing the pirate station, although in this instance these landowners seem more like active participants than just facilitators.

As I have said before, pirate radio broadcasters cause harm to existing licensed broadcasters by depriving them of their regular audience and potential listeners while, at the same time, decreasing crucial advertising revenues that fund the station's operations. More importantly, the listening American public can be put at greater public safety risk when prevented access to legitimate radio stations in times of emergency. If you believe that radio is actually a critical medium for sharing vital information, especially in times of crisis as has been noted during the recent hurricanes of Harvey, Irma and Maria, then allowing rogue individuals to potentially cause interference, effectively steal listeners and put legitimate broadcasters at risk of failing is antithetical to the Commission's purpose.

Before the Commission is an NAL initializing forfeiture proceedings against three individuals who have repeatedly and intentionally participated as pirate radio broadcasters in the Miami radio market. These individuals, based on the information presented, have been at this since at least 2012 and have been subject to numerous warnings. While I look forward to any response they may provide, I question whether we will get one worthy of refuting the claims. Instead, I suspect the perpetrators will run and hide, failing to respond at all.

While I applaud our action today, I would be remiss if I didn't note the inadequacy of the potential fines contained in the NAL. In particular, the collective penalty being imposed would be a little over \$144 thousand. That's pennies in the bucket compared to the huge penalties we have sought against rule violators in other contexts. I am hopeful that Congress will revisit and amend the statute to deter the formation and operation of pirate radio stations. It would also be helpful to expand the scope of the Commission's authority to go after additional participants who are facilitating their illegal practices.

**STATEMENT OF
COMMISSIONER BRENDAN CARR**

Re: Fabrice Polynice, North Miami, FL, File No. EB-FIELDSCR-13-00012949; Harold Sido and Veronise Sido, North Miami, FL, File No. EB-FIELDSCR-15-00018596.

This case shows how far unauthorized, or pirate, radio operators are willing to go in their efforts to avoid complying with the law. In this case, agents with the Commission's Miami field office issued numerous warnings to the operators, U.S. Marshals seized their pirate radio equipment, and the Enforcement Bureau issued both a Notice of Apparent Liability (NAL) and a Forfeiture Order against one of them. Despite these actions, the pirate radio station continued to broadcast.

But this case also demonstrates this Commission's commitment to shutting down pirate radio operations. The Enforcement Bureau is stepping up its efforts, and today's NAL is a great example of that. Given the unique relationship between the owners of the property where agents discovered the pirate radio equipment and the operation of that station, this NAL imposes a fine jointly on all parties that appear to be involved. The operation of pirate radio stations can endanger public safety and other authorized communications, so the agency needs to take it seriously. I am glad that we are now doing so and welcome the message that this NAL sends.

Thank you to the Enforcement Bureau and the Commission's field agents for their hard work in this area.