

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
)

FORFEITURE ORDER

Adopted: July 19, 2018

Released: July 19, 2018

By the Commission: Commissioner O’Rielly issuing a statement.

I. INTRODUCTION

1. We impose a penalty of \$144,344 against Fabrice Polynice (Mr. Polynice), and Harold and Veronise Sido (collectively, the Sidos), jointly and severally, for willfully operating an unlicensed FM broadcast radio station on 90.1 MHz from the Sidos’ residence in North Miami, Florida. The Commission takes very seriously allegations of unauthorized broadcasting. Operating an unlicensed radio station, or “pirate station,” is illegal under Section 301 of the Communications Act of 1934, as amended (Act).¹ Such stations undermine the Commission’s primary mission to manage radio spectrum. They can interfere with licensed communications by authorized broadcasters and public safety entities. Moreover, such illegal operations pose a danger to the public because they interfere with licensed stations that inform their listeners of important public safety messages, including Emergency Alert System (EAS) transmissions that provide vital information regarding hazardous weather events and other dangers to the public.

2. In 2017, the Commission adopted a Notice of Apparent Liability for Forfeiture (NAL) in which we proposed a forfeiture of \$144,344, jointly and severally, against Mr. Polynice and the Sidos for their longstanding joint operation of a pirate radio station.² The Commission’s investigation showed that Mr. Polynice actively promoted and broadcast the programming for the illegal radio transmissions, while the Sidos made their property available to Mr. Polynice and otherwise supported, participated in, and acquiesced to, the unlicensed radio station’s operation. Mr. Polynice filed his response to the NAL separately from the Sidos’ joint response.³ After reviewing both responses, we find no reason to cancel, withdraw, or reduce the proposed penalty, and assess the \$144,344 forfeiture the Commission previously proposed.

¹ 47 U.S.C. § 301.

² Fabrice Polynice, Harold Sido and Veronise Sido, Notice of Apparent Liability for Forfeiture, 32 FCC Rcd 7949 (2017) (NAL).

³ Harold Sido and Veronise Sido, Response to Notice of Apparent Liability (Oct. 23, 2017) (on file in EB-FIELDSCR-15-00018596) (Sido NAL Response); Fabrice Polynice, Response to Notice of Apparent Liability (Oct. 23, 2017) (on file in EB-FIELDSCR-15-00018596) (Polynice NAL Response).

II. BACKGROUND

3. On September 26, 2017, the Commission issued an *NAL* against Mr. Polynice and the Sidos proposing a \$144,344 forfeiture for their apparent willful violation of Section 301 of the Act by operating an illegal radio station.⁴ Section 301 of the Act states that “[n]o 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.”⁵

4. The facts presented in the *NAL* are incorporated here by reference, as neither Mr. Polynice nor the Sidos provide any evidence to the contrary in their responses. To summarize, the Commission has a long history of enforcement actions against Mr. Polynice for illegal operation of a pirate radio station from different locations.⁶ The Commission’s Enforcement Bureau had previously found Mr. Polynice liable for operating an unlicensed radio station in North Miami in 2013.⁷ The Commission’s agents found repeatedly that an unauthorized radio station was being operated from the Sidos’ property on 90.1 MHz at a power level that required a Commission authorization. Moreover, the *NAL* set forth multiple facts demonstrating a connection between Mr. Polynice and the Sidos in the operation of the pirate radio station at issue here. The *NAL* contained facts demonstrating that Mr. Polynice was apparently an operator of the station, including that: (1) he provided programming, promoted the station, and made public and commercial contact possible by advertising his personal phone number as the number of the station; (2) FCC Agents recognized that the audio programming “Radio Touche Douce” on the illegal station on 90.1 MHz FM in North Miami, Florida was a brand that Mr. Polynice previously admitted was his brand, (3) Mr. Polynice had previously admitted he is “DJ Paz,” the name of the on-air personality of “Radio Touche Douce,” (4) FCC Agents had found public evidence that Mr. Polynice said he owned Radio Touche Douce, (5) he had posted pictures of himself on the Facebook page for “Radio Touche Douce,” and (6) he announced that he was “live on the air” on station 90.1 FM and encouraged people to “tune in,” which are statements consistent with over-the-air broadcasts.⁸ Through investigation, the FCC Agents found that the Sidos provided a location for the antenna and transmitter for the station, paid the station’s electricity and Internet bills, and otherwise actively and knowingly provided support for the station.⁹

5. The *NAL* found Mr. Polynice and the Sidos apparently liable for a total proposed base forfeiture amount of \$710,000, which was then reduced to \$144,344, the statutory maximum permitted under Section 503(b)(2)(D) of the Act for continuing violations arising from a single act or failure to act. We also found that because the violations in this case were egregious, intentional, and repeated, a significant increase to the base forfeiture would have been warranted¹⁰ if the proposed forfeiture amount had not already reached the statutory maximum.

⁴ *NAL*. The *NAL* includes a more complete discussion of the facts and history of this case and is incorporated herein by reference. To the extent that Mr. Polynice or the Sidos dispute any material fact, we address such claim below.

⁵ 47 U.S.C. § 301.

⁶ See *Fabrice Polynice*, Notice of Apparent Liability for Forfeiture, 27 FCC Rcd 15079 (EB 2012) (*Polynice NAL*), 27 FCC Rcd 15079, para. 2 and n.2 (identifying three different transmitter locations); *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).

⁷ See *id.*

⁸ *NAL* at 7953, para. 12.

⁹ *NAL* at 7954, para. 16.

¹⁰ See 47 U.S.C. 503(b)(2)(E); 47 CFR 1.80(b)(8); 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) (forfeiture paid); *Midessa Television Ltd. P'ship*,

6. On October 23, 2017, Mr. Polynice responded to the *NAL* with several arguments as to why it should be reduced or cancelled: lack of notice, lack of citation, impermissible selective enforcement, lack of evidence, and inability to pay the proposed forfeiture.¹¹ First, Mr. Polynice argues that he did not receive the Notices of Unlicensed Operation referred to in the *NAL*, and therefore he did not have notice that his actions were illegal. Second, Mr. Polynice asserts that the Commission must send him a citation prior to issuing an *NAL* against him. Third, Mr. Polynice alleges that the Commission has engaged in impermissible selective pirate radio enforcement in adopting the *NAL*.¹² Fourth, Mr. Polynice argues that the Commission ignored certain facts and based the *NAL* on circumstantial evidence without directly witnessing Mr. Polynice actually broadcasting on the illegal station. For example, he argues that there was no evidence he was broadcasting from the shed on the Sidos' property, that the agents did not go into the shed, and that because the agents did not see equipment in the shed on the last site visit, he is not liable. Mr. Polynice also argues that, because he has no copyright of the names "Radio Touche Douce" or "DJ Paz," anyone can use those names.¹³ He further claims that "the commissions [sic] use as evidence that they believe Mr. Polynice's phone number is broadcast over the alleged pirate radio station is without any justification. Mr. Polynice is well known in the Haitian community and attends events where he advertises his business."¹⁴ In making these assertions in the Polynice *NAL* Response, neither Mr. Polynice nor his counsel submitted the required statement under oath supporting the factual assertions in his response.¹⁵ Nor does Mr. Polynice dispute any of the facts set forth in the *NAL*; rather, he simply asserts in his unverified response that the *NAL* "assumes facts not supported by evidence."¹⁶ Finally, Mr. Polynice argues that the proposed fine should be reduced or cancelled because of his inability to pay it.¹⁷

7. On October 23, 2017, the Sidos also filed a response to the *NAL*.¹⁸ The Sidos claim that they rented the shed in their yard to Mr. Polynice but they "were never involved with, or aware of, any illegal pirate station operating on our property."¹⁹ The Sidos claim they were "completely unaware of the nature of [Mr. Polynice's] business activities" and ask that the fine be "withdrawn immediately."²⁰ The Sidos do not otherwise respond to any of the specific facts set forth in the *NAL*.

III. DISCUSSION

8. The Commission proposed a forfeiture in this case in accordance with Section 503(b) of the Act,²¹ Section 1.80 of the Commission's rules,²² and the Commission's *Forfeiture Policy Statement*.²³

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) (forfeiture paid).

¹¹ Fabrice Polynice, Response to Notice of Apparent Liability (Oct. 23, 2017) (on file in EB-FIELDSCR-15-00018596) (Polynice *NAL* Response).

¹² Polynice *NAL* Response at 6.

¹³ Polynice *NAL* Response at 5.

¹⁴ Polynice *NAL* Response at 6.

¹⁵ 47 CFR § 1.16.

¹⁶ Polynice *NAL* Response at 1.

¹⁷ Polynice *NAL* Response at 6 and attachments (submitting three years of tax returns).

¹⁸ Sido *NAL* Response.

¹⁹ *Id.*

²⁰ *Id.*

²¹ 47 U.S.C. § 503(b).

²² 47 CFR § 1.80.

When we assess forfeitures, Section 503(b)(2)(E) requires that we take into account 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.”²⁴ As discussed below, we have fully considered the legal and factual arguments asserted in both the Polynice NAL Response and the Sido NAL Response, but we find none of them persuasive. We therefore affirm the \$144,344 forfeiture proposed in the *NAL*.

A. The Polynice NAL Response

9. As noted above, Mr. Polynice advances several arguments as to why he should not be held liable for violation of Section 301 of the Act. He argues that the Commission failed to provide a citation prior to releasing the *NAL*, that the Commission lacked the evidence to assess a forfeiture against Mr. Polynice, and that he did not receive the various Notices of Unauthorized Operation (NOUOs) referred to in the *NAL*. None of his arguments are persuasive. Accordingly, we decline to reduce or cancel the proposed forfeiture against Mr. Polynice.

1. Illegal Broadcast Station Operators Are Not Entitled to Citations Under the Act

10. Mr. Polynice is incorrect in his assertion that the Commission was required to issue him a citation prior to issuing the *NAL*.²⁵ Although Section 503(b)(5) of the Act requires the Commission to issue a citation before a Notice of Apparent Liability (NAL) in many instances, the Commission is not required to do so in the case of unlicensed station operation. The citation requirement in Section 503(b)(5) does not apply “if the person involved is engaging in activities for which a license, permit, certificate, or other authorization is required....”²⁶ This exception specifically allows the Commission to proceed directly to an NAL against broadcasters who are operating without a required license. As stated in the *NAL*, Mr. Polynice’s station operated on a frequency within the FM band at a power level requiring a license.²⁷ As such, the exception in 503(b)(5) applies, and a citation was not required.

2. The Evidence in the NAL Proves that Mr. Polynice Was an Operator of the Unlicensed Station

11. Mr. Polynice does not deny the evidence against him in the *NAL*. Specifically, he does not deny that it was his programming that the FCC Agents heard and recorded or that he operated the station.²⁸ Rather, Mr. Polynice argues that the Commission’s evidence is circumstantial and therefore cannot be relied on; that is, because Commission agents did not witness Mr. Polynice’s live operation of the station at the shed, we cannot proceed in an enforcement action against him. This assertion is simply incorrect. Contrary to Mr. Polynice’s argument, the Commission did not need to find Mr. Polynice in the

²³ *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 (1997) (*Forfeiture Policy Statement*), recons. denied, Memorandum Opinion and Order, 15 FCC Rcd 303 (1999).

²⁴ 47 U.S.C. § 503(b)(2)(E).

²⁵ Polynice NAL Response at 3.

²⁶ 47 U.S.C. § 503(b)(5) (emphasis added).

²⁷ *NAL* at 7952, para. 11.

²⁸ *NAL* at 7953, para. 12 ([O]n 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’...Mr. Polynice has previously admitted to the Commission that he developed the brand name ‘Touche Douce’ and is ‘DJ Paz.’ 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.’ Further, Mr. Polynice’s personal phone number is advertised as the number of the station. The August 26, 2015 broadcast program recorded by the agents announced that ‘DJ Paz’ was on the air.”)

shed in which some of the equipment was operating in order to find him liable for operating an illegal station under the Act.²⁹ The evidence demonstrates that Mr. Polynice produced radio programming for an illegal station, and advertised that he did so via social media available to the public.³⁰ The Commission previously found that Mr. Polynice violated the Act by providing illegal radio station programming and other station operations such as selling advertising. The same programming was identified by the Field Agents who investigated this matter. The programming included Mr. Polynice's telephone number.³¹

3. Commission Enforcement Action Against Pirate Radio Operators Is Critically Important and Our Enforcement Against Mr. Polynice Lies Well Within Commission Discretion

12. We also reject Mr. Polynice's unsupported allegation of impermissible selective pirate radio enforcement. First, pirate radio enforcement is critically important. The Commission is required by statute to manage spectrum in the public interest.³² Those that illegally co-opt radio spectrum for their own commercial use, such as Mr. Polynice, violate the law and endanger the public. They override public interest programming and deprive the public of important public safety information by causing interference to stations that deliver Emergency Alert System (EAS) messages. Moreover, by virtue of operating radio stations without obtaining required licenses, these stations skirt the requirements that apply to licensed stations, such as the requirement to transmit EAS messages.³³

The EAS is a national public warning system through which broadcasters, cable systems, and other service providers (EAS Participants) deliver alerts to the public to warn them of impending emergencies and dangers to life and property. Although the primary purpose of the EAS is to equip the President with the capability to provide immediate communications and information to the public during periods of national emergency, the EAS is also used by the National Weather Service (NWS) and state and local governments to distribute voluntary alerts such as weather-related and child abduction (AMBER) alerts. EAS alerts ...deliver accurate, secure, and geographically-targeted alerts to the public.³⁴

EAS transmission requires a station to encode and decode EAS alerts. Pirate radio stations are not known to possess this crucial public safety capability and therefore can leave their listeners

²⁹ Polynice's argument here is akin to stating that one could not be found guilty of robbery (or any crime) unless the police actually witnessed the robbery (or specific crime). That is simply not the proper evidentiary standard. *See, e.g., Americom Las Vegas Ltd. Partnership*, Memorandum Opinion and Order, 21 FCC Rcd 14286 (2006) (Commission rejected licensee's argument that evidence was circumstantial because it did not submit any evidence to contradict the agents' observations).

³⁰ *See* Section II, para. 4, *infra*.

³¹ Mr. Polynice's statements that anyone could have advertised his phone number or used the non-copyrighted names "Radio Touche Douce" or "DJ Paz" are not evidence that he did not use the phone number or monikers. Indeed, a careful reading of the Polynice NAL Response does not indicate that Mr. Polynice denied using these names or phone numbers on an unlicensed radio station. *See* Polynice NAL Response at 5.

³² The Commission is required to "maintain the control of the United States over all the channels of radio transmission; and to provide for the use of such channels ...under licenses granted by Federal authority..." 47 U.S.C. § 301.

³³ 47 CFR § 11.11.

³⁴ *Part 11 of the Commission's Rules Regarding Emergency Alert System*, Report and Order, 32 Rcd 10812 (2017) (footnotes omitted). "The EAS Protocol uses a three-character event code to describe the nature of the alert in text crawls and in the audio portion of EAS alerts (e.g., TOR for Tornado)." *Id.* EAS alerts warn the public of a wide range of potential dangers, including but not limited to blizzards, coastal flooding, fire, flash flooding, hazardous materials, and hurricanes. 47 CFR § 11.31(e).

unprepared and uninformed about important emergency notifications that are crucial to public safety.

13. Second, as detailed above and in the *NAL*, the uncontested facts demonstrate Mr. Polynice's multi-year pirate radio station operations, in flagrant violation of Section 301 of the Act.

14. Third, and finally, Mr. Polynice fails to provide any evidence beyond a naked assertion that the Commission is impermissibly selectively enforcing Section 301 of the Act. He does not provide the identity of any other station, legal or illegal, to support his claim. Nor has he identified any legal station who has violated the Act or any Commission rules or any other pirate station – let alone one with a history of violating Section 301 of the Act for years – that we have failed to take proper enforcement against. Because Mr. Polynice did not provide any specific evidence to support his claim of impermissible selective enforcement, we find no reason to investigate his factual claim further.³⁵ Mr. Polynice's argument also fails as a legal matter. Section 403 of the Act provides the Commission with “full authority and power at any time to institute an inquiry, on its own motion, ... relating to the enforcement of any of the provisions of this Act.”³⁶ The Commission has broad discretion to initiate investigations “so long as the matter is within the agency's jurisdiction.”³⁷ Such discretion is necessary because an agency cannot enforce against every violation by every violator, and the agency is in the best position to assess enforcement priorities.³⁸ Indeed, the Commission has previously found that the Commission has “prosecutorial discretion in choosing to initiate investigations, *and the absence of action against any or all potentially liable entities does not preclude it from enforcing against a specific violator.*”³⁹ Finally, we observe that the Commission has taken action against other pirates, including working recently with the Department of Justice to seize pirate radio station equipment in the Boston, New York City, and Miami areas.⁴⁰

4. Mr. Polynice's Characterization of the *NAL* Is Mistaken.

15. We also disagree with Mr. Polynice's assertion of the purpose of the *NAL*. The Polynice *NAL* Response states that “Mr. Polynice is a proud member of the Miami-Dade Haitian community. He sees this Commission's actions as a way to keep the Haitian community in a weak position and without the necessary information they need to succeed. He further asserts that whoever broadcasts to their community in an effort to give information should not be penalized but instead be given the opportunity to broadcast legally.”⁴¹ We are not persuaded. As an initial matter, Mr. Polynice did not provide any evidence that he is the sole source of programming for the Miami-Dade Haitian community. Moreover,

³⁵ See, e.g., *South Seas Broadcasting, Inc.*, 27 FCC Rcd 4151, 4155-56, para. 13 (MB 2012).

³⁶ 47 U.S.C. § 403.

³⁷ *Viacom Inc., ESPN Inc.*, Forfeiture Order, 30 FCC Rcd 797, 804, para. 18 (2015) (*Viacom/ESPN*); see *Spanish Broad. Sys. Holding Co., Inc.*, Forfeiture Order, 27 FCC Rcd 11956, 11959, para. 8 & n.30 (EB 2012) (Section 403 provides broad discretion as to the type of misconduct the Commission may investigate and subject to enforcement action). The Supreme Court has recognized that an agency generally has absolute discretion on a decision to take an enforcement action. “[A]n agency's decision not to prosecute or enforce, whether through civil or criminal process, is a decision generally committed to an agency's absolute discretion.” *Heckler v. Chaney*, 470 U.S. 821, 831 (1985) (citing *United States v. Batchelder*, 442 U.S. 114 (1979); *United States v. Nixon*, 418 U.S. 683 (1974); *Vaca v. Sipes*, 386 U.S. 171 (1967); *Confiscation Cases*, 7 Wall. 454 (1869)).

³⁸ “An agency generally cannot act against each technical violation of the statute it is charged with enforcing. The agency is far better equipped ... to deal with the many variables involved in the proper ordering of its priorities.” *Heckler v. Chaney*, 470 U.S. at 831.

³⁹ *Viacom/ESPN*, 30 FCC Rcd at 804, para. 17 (citations omitted) (emphasis added).

⁴⁰ See, e.g., Radio Equipment Seized from Two Illegal Radio Stations in Boston, Public Notice (Mar 28, 2018); FCC's Ramped Up 'Pirate Radio' Enforcement Yields Results, Public Notice (April 11, 2018); Pirate Radio Equipment Seized from Illegal Radio Station in Manhattan, Public Notice (May 15, 2018).

⁴¹ Polynice *NAL* Response at 6.

beyond the almost tacit admission that Mr. Polynice was operating an illegal pirate radio station, nothing in the Commission's rules prevents someone who wants to serve an underserved community from providing programming legally.⁴² In addition to applying for a broadcast license when one becomes available, licenses may also be purchased from existing licensees on the secondary market, subject to Commission approval.⁴³ Mr. Polynice also can provide programming through contractual agreements with existing licensed stations.⁴⁴ In addition, he can provide his programming solely over the Internet without the need for an FCC license. In short, the existing marketplace provides a number of methods to provide programming legally to an underserved community. The appropriate response to the issues that Polynice describes is not to misappropriate radio spectrum, but rather to provide service to the community through legal means.

5. The NAL Fulfills the Notice Requirement of Section 503 of the Act.

16. The Commission provided Mr. Polynice with the statutorily required notice in the *NAL*. We reject Mr. Polynice's assertions in his NAL Response that the Commission cannot issue a forfeiture against him because he did not receive adequate notice, and that his due process rights have been violated.⁴⁵ As a threshold matter, Mr. Polynice misunderstands when notice is required and how the Commission provides notice of an apparent violation of the Act prior to issuing a forfeiture order. Such notice is provided when the Commission issues an NAL. Indeed, on its face, the *NAL* is very clearly labelled "*Notice of Apparent Liability for Forfeiture*" (emphasis added). Section 503(b)(4) of the Act clearly contemplates that the *NAL* is the notice that secures a party's due process rights before the Commission can impose a monetary forfeiture.⁴⁶ It provides that "[n]o forfeiture penalty shall be imposed under this subsection against any person unless and until—

- “(A) the Commission issues a notice of apparent liability, in writing, with respect to such person;
- (B) such notice has been received by such person, or until the Commission has sent such notice to the last known address of such person, by registered or certified mail; and
- (C) such person is granted an opportunity to show, in writing, within such reasonable period of time as the Commission prescribes by rule or regulation, why no such forfeiture penalty should be imposed.”⁴⁷

Further, the NAL must “(i) identify each specific provision, term, and condition of any Act . . . which [the] person apparently violated or with which [the] person apparently failed to comply; (ii) set forth the nature of the act or omission charged against such person and the facts upon which such charge is based; and (iii) state the date on which such conduct occurred.”⁴⁸

17. The Commission issued the *NAL* on September 26, 2017. The *NAL* identified Section 301 of the Act as the provision Mr. Polynice apparently violated, set forth the nature of the act charged against Mr. Polynice (operating an unlicensed radio station) and the facts upon which this charge was based, and identified the dates on which the unlicensed radio station operation occurred. The *NAL* was

⁴² One licensed FM station currently serves the Haitian community in South Florida. *See NAL* at 7961 (Statement of Comm. Mignon L. Clyburn).

⁴³ 47 CFR § 73.3540.

⁴⁴ *See, e.g.*, 47 CFR § 73.3613(d), (e).

⁴⁵ Polynice NAL Response at 2.

⁴⁶ 47 U.S.C. § 503(b)(4). That the Enforcement Bureau issued NOUOs prior to issuing the *NAL* at issue only means that the Bureau issued non-monetary warnings previously. While those NOUOs, and the evidence underlying them, may provide evidence used in the *NAL*, they are not themselves notice that may independently serve as a basis for a forfeiture; rather, the *NAL* serves as that notice.

⁴⁷ *Id.*

⁴⁸ 47 U.S.C. § 503(b)(4)(C).

sent to Mr. Polynice on October 2, 2017;⁴⁹ Mr. Polynice, through counsel, timely responded to the *NAL*, indicating receipt and actual knowledge of the contents of the *NAL*. Thus, the Commission met the notice and due process requirements of Section 503(b) of the Act.

18. We also reject Mr. Polynice's assertion that he had no prior notice that operating an illegal station was against the law as both irrelevant and factually incorrect. Mr. Polynice's assertion is irrelevant because there is no knowledge requirement in Section 301, which states that "[n]o 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."⁵⁰ As noted in the *NAL*, 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.⁵¹ 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.⁵² The *NAL* found that because Mr. Polynice consciously operated the station, the apparent violation of the Act was willful.⁵³ Thus, Mr. Polynice can be liable for violating the Act even if he did not know that operating an illegal station was against the law. In any event, Mr. Polynice's assertion is also incorrect as a factual matter. In 2012, Mr. Polynice was the subject of an *NAL* for the same Section 301 violation.⁵⁴ The Bureau assessed Mr. Polynice a forfeiture for the same violation in 2013, and the Bureau dismissed an untimely filed petition for reconsideration of that forfeiture in 2016.⁵⁵ Each of these decisions stated the liability and penalties associated with operating an unlicensed broadcast station. In that case also, Mr. Polynice hired counsel and responded to the Commission. Therefore, his argument that he did not have notice that operation of an unlicensed station violated the Act is contrary to fact and we reject it here.⁵⁶

B. The Sido *NAL* Response

19. We reject the Sidos' argument that they were unaware of the illegal pirate radio operations on their property because it is plainly inconsistent with the evidence. In their *NAL* Response, the Sidos claim that they rented the shed on their property to Mr. Polynice and had no knowledge of the illegal activity that he was conducting on their property, and therefore they are not liable for the pirate

⁴⁹ The *NAL* was sent to Mr. Polynice via U.S. Postal Service certified mail at two different addresses: one to the address where his business operates, which is reflected on his federal tax returns for 2014, 2015 and 2016, and one for his residence.

⁵⁰ 47 U.S.C. § 301.

⁵¹ See 47 U.S.C. § 503(b); *NAL*, 32 FCC Rcd at 7953, para. 13.

⁵² 47 U.S.C. § 312.

⁵³ *NAL*, 32 FCC Rcd at 7953, para. 13.

⁵⁴ *Polynice NAL*, 27 FCC Rcd at 15079, para. 1.

⁵⁵ *Polynice Forfeiture Order*, 28 FCC Rcd at 4297, para. 1, *recon. denied*, *Fabrice Polynice*, Memorandum Opinion and Order, 31 FCC Rcd at 9625, para. 1.

⁵⁶ Mr. Polynice was also the subject of a state law conviction for operating an illegal radio station, which is based on a Florida statute that prohibits a person to "[m]ake, or cause to be made, a radio transmission in this state unless the person obtains a license or an exemption from licensure from the Federal Communications Commission under 47 U.S.C. s. 301, or other applicable federal law or regulation." 877.27(1)(a), Fla. Stat. (2017). See *Polynice NAL*, 27 FCC Rcd at 15081, n.10, citing Lexis/Nexis Investigative Portal Homepage, <http://www.lexisnexis.com/government/solutions/investigative/>, Person Report (last visited May 24, 2012), indicating that Mr. Polynice was arrested by Miami-Dade Police for illegal radio transmission and interference (Miami-Dade Court Case No. F06038860) and sentenced to one year community supervision (Florida Department of Corrections Case Number 0638856).

operation that occurred using their shed.⁵⁷ These unsupported assertions about the Sidos' role in the unauthorized operation of this facility conflict with the specific facts described in the *NAL*, most of which they do not dispute. As we stated in the *NAL*, the Sidos received numerous verbal and written warnings from the Commission regarding the illegal radio station operating on their property over a period of years. Moreover, radio equipment was seized from the shed on their property pursuant to a federal court order in 2012.⁵⁸ Further, the station's broadcast antenna was plainly visible in the Sidos' backyard; the Sidos supplied and paid for the Internet connection necessary to carry the programming from its origination point to the unauthorized transmitter; the Sidos supplied and paid for the electrical power services used by the station and transmitter, and the Sidos provided the site on which the antenna, transmitter, and cable used by the station were located.⁵⁹ Additionally, in December 2016, Mr. Sido reposted on his Facebook page a 2014 video showing that Mr. Sido was present at the studio with Mr. Polynice during an earlier instance of the illegal operation of the station.⁶⁰

20. As stated above, the Sidos do not dispute any of this evidence in their one-page *NAL* Response and, in fact, admit that they permitted Mr. Polynice to use their shed.⁶¹ The Sidos' claims that they were unaware that Mr. Polynice was operating a radio station from the shed on their property, and that they did not know that the operation of such a station was illegal, are simply not credible.⁶² Instead, we find that the detailed evidence, over a period of years, clearly demonstrates the Sidos' knowledge of and participation in the pirate radio station operation. We therefore decline to cancel, reduce, or rescind the forfeiture with respect to Mr. and Mrs. Sido.⁶³

C. THE FULL AMOUNT OF THE FORFEITURE IS WARRANTED

21. After considering the relevant statutory factors and the Commission's Forfeiture Policy Statement, we find that Mr. Polynice and the Sidos are jointly and severally liable for a total forfeiture of \$144,344. As explained in the *NAL*, this amount results from imposing a base forfeiture of \$10,000 for each day the unauthorized radio station was operated by Mr. Polynice and Mr. and Mrs. Sido between September 27, 2016 and December 6, 2016, reduced to the statutory maximum for a continuing violation of Section 301 of the Act. Specifically, the Commission proposed that the Sidos and Mr. Polynice were liable for a total proposed base forfeiture amount of \$710,000, which we were required to reduce to \$144,344, the maximum permitted under Section 503(b)(2)(D) of the Act for continuing violations arising from a single act or failure to act. The Commission also found that because the violations in this case are egregious, intentional, and repeated, a significant increase to the base forfeiture would have been

⁵⁷ Sido *NAL* Response at 1.

⁵⁸ *NAL* at 7950, para. 7; *see also 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).

⁵⁹ *NAL* at 7954, paras. 15-17.

⁶⁰ *NAL* at 7952, para. 10, n.14; *NAL* at 7954, para. 17.

⁶¹ *See generally* Sido *NAL* Response.

⁶² In their *NAL* Response, the Sidos claim for the first time that they "rented" the shed in their yard to Mr. Polynice. Sido *NAL* Response at 1. This statement conflicts with detailed information that the Sidos provided to an FCC Agent during the investigation that Mr. Polynice did not pay for the use of the shed and that the Sidos were the only people who had access to the shed and a key to the lock on the shed. *NAL* at 7952, para. 11. Whether the Sidos obtained actual payment from Mr. Polynice for his use of their shed is immaterial to the matter before us. The Sidos had the ability to power the transmitting equipment on and off, indicating some degree of control over the station. *See NAL* at 7952, para. 11, n.15. Further, the Sidos do not claim that they have ceded control of the shed or other property to Mr. Polynice.

⁶³ The amount of the forfeiture is discussed, *infra*, in Section IIIC.

warranted if the proposed forfeiture amount was not already at the statutory maximum.⁶⁴ Nothing in their responses to the *NAL* persuades us otherwise. Accordingly, we find no basis to reduce the forfeiture.

1. A Reduction of the Proposed Forfeiture for Mr. Polynice is Not Warranted in Light of the Record of Noncompliance and Egregious and Intentional Misconduct

22. We decline to reduce the proposed forfeiture against Mr. Polynice based on his asserted inability to pay.⁶⁵ In support of this argument, Mr. Polynice provided tax returns for years 2014, 2015, and 2016, which purport to show incomes of not more than \$16,310 in any of those years.⁶⁶ We reviewed these documents, but nonetheless decline to reduce the proposed forfeiture based on the longstanding and egregious nature of his misconduct.

23. A violator's "ability to pay" is only one of several factors the Commission must consider when determining an appropriate forfeiture under Section 503 of the Act and our forfeiture guidelines. We must also 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, . . . and such other matters as justice may require."⁶⁷ As described in the *NAL* and in the paragraphs above, Mr. Polynice has a long history of violating Section 301 of the Act by operating an illegal radio station. Mr. Polynice continued to operate an unlicensed FM station after U.S. Marshals seized 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 subject to a prior Commission *NAL* and Forfeiture Order for illegal operation of a radio station. These prior government actions have had no apparent effect on his willful violations of state and federal law. Over a five-year period, FCC field agents documented the operation of the unlawful pirate radio station on multiple occasions. The proposed forfeiture amount was based on the Commission's apparent finding that Mr. Polynice's illegal actions were egregious and deliberate, and showed a troubling disregard for the Commission's authority and requirements. The *NAL* also stated that such unlicensed stations can interfere with licensed communications, including authorized broadcasts and public safety transmissions.⁶⁸ Mr. Polynice's actions could have created a dangerous situation by depriving the public of important public safety information that is delivered by the Emergency Alert System. The Polynice *NAL* Response contained no information that justifies or excuses his illegal behavior.⁶⁹ Accordingly, we decline to downwardly adjust the proposed forfeiture notwithstanding Mr. Polynice's request to reduce the forfeiture amount based on an inability to pay.

⁶⁴ *NAL* at 7597.

⁶⁵ Polynice *NAL* Response at 1. Mr. Polynice submitted tax returns for the previous three years in accordance with the instructions in the *NAL*.

⁶⁶ Polynice *NAL* Response at 8-14.

⁶⁷ 47 U.S.C. § 503(b)(2)(E).

⁶⁸ See *NAL*, 32 FCC Rcd at 7949, para. 2.

⁶⁹ See, e.g., *TV Max, Inc., et al.*, Forfeiture Order, 29 FCC Rcd 8648, 8661, para. 25 (2014) (noting that the Commission "has previously rejected inability to pay claims in cases of repeated or otherwise egregious violations"); *Net One International, Inc.*, 31 FCC Rcd. 2367 (2016); *D.T.V., LLC*, Forfeiture Order, 31 FCC Rcd. 2650 (2016), *D.T.V., LLC*, Memorandum Opinion and Order, 31 FCC Rcd. 8927 (EB 2016) (dismissing petition for reconsideration); *Kevin W. Bondy*, Forfeiture Order, 26 FCC Rcd 7840, 7844-45, para. 16 (EB 2011) (violator's repeated intentional and malicious violations outweighed evidence of inability to pay), *recon. dismissed*, Memorandum Opinion and Order, 28 FCC Rcd 1170 (EB 2013); *Whisler Fleurinor*, Forfeiture Order, 28 FCC Rcd 1087, 1090, para. 9 (EB 2013) (violator's demonstrated inability to pay outweighed by gravity of repeated violations).

Rather, we find that factor to be greatly outweighed by the other balancing factors that militate in favor of a large forfeiture.⁷⁰

2. The Sidos Have Provided No Basis to Reduce or Cancel the Forfeiture

24. In the preceding section of the Order, we address and reject the Sidos' claim that they did not violate Section 301 of the Act.⁷¹ Beyond claiming that they have no legal liability, the Sidos do not separately challenge the amount of the proposed forfeiture.⁷² Accordingly, we find no basis to reduce the proposed forfeiture against the Sidos.

25. Weighing the relevant statutory factors and our own forfeiture guidelines, we conclude, based upon the evidence before us, that the proposed forfeiture of \$144,344 properly reflects the seriousness, duration, and scope of Mr. Polynice and the Sidos' violations.

IV. CONCLUSION

26. Based on the record before us and in light of the applicable statutory factors, we conclude that Mr. Polynice and the Sidos willfully violated Section 301 of the Act by operating an illegal radio station from the Sidos' residence in North Miami, Florida. Therefore, we decline to cancel or reduce the \$144,344 forfeiture proposed in the *NAL*.

V. ORDERING CLAUSES

27. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Act,⁷³ and Section 1.80 of the Rules,⁷⁴ Fabrice Polynice, Harold Sido, and Veronise Sido **ARE JOINTLY AND SEVERALLY LIABLE FOR A MONETARY FORFEITURE** in the amount of One Hundred Forty-Four Thousand, Three Hundred Forty-Four dollars (\$144,344) for willfully violating Section 301 of the Act.

28. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within thirty (30) calendar days after the release of this Forfeiture Order.⁷⁵ If the forfeiture is not paid within the period specified, the case may be referred to the U.S. Department of Justice for enforcement of the forfeiture pursuant to Section 504(a) of the Act.⁷⁶

29. 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.⁷⁷ When completing the 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:

⁷⁰ See *Adrian Abramovich, Marketing Strategy Leaders, Inc., and Marketing Leaders, Inc.*, Forfeiture Order, FCC 18-58 at para. 45 (rel. May 10, 2018) (ability to pay is one of several factors to be considered in determining the appropriate forfeiture and can be outweighed by other factors to result in a large forfeiture).

⁷¹ See Section IIIA, *supra*.

⁷² See generally Sido *NAL* Response.

⁷³ 47 U.S.C. § 503(b).

⁷⁴ 47 CFR § 1.80.

⁷⁵ *Id.*

⁷⁶ 47 U.S.C. § 504(a).

⁷⁷ An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

- Payment by check or money order must be made payable to the order of the Federal Communications Commission. Such payments (along with completed Form 159) must be mailed to the 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.

30. 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 20554.⁷⁸ Questions regarding payment procedures should be directed to the Financial Operations Group Help Desk by telephone, 1-877-480-3201, or by e-mail, ARINQUIRIES@fcc.gov.

31. **IT IS FURTHER ORDERED** that a copy of this Forfeiture Order shall be sent by first class mail and certified mail, return receipt requested, to Fabrice Polynice, at his business and residential addresses in North Miami, Florida with a copy to his counsel, Gary Rosenberg, PA, 1555 North Park Drive, Suite 103, Weston, Florida 33326, and to Harold and Veronise Sido at their address of record in North Miami, Florida.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

⁷⁸ See 47 CFR § 1.1914.

**STATEMENT OF
COMMISSIONER MICHAEL O'RIELLY**

Re: *Fabrice Polynice North Miami, FL, Harold Sido and Veronise Sido North Miami, FL*, EB File Nos. EB-FIELDSCR-13-00012949, EB-FIELDSCR-15-00018596.

I strongly support today's Forfeiture Order against both a known operator of a pirate radio station and the landlords that rented the shed where the illegal pirate radio operations took place. This item, however, is informative for a number of reasons.

First, the fine against the pirate operator should be much higher, but our forfeiture authority is capped due to the maximum set out by statute. The Notice of Apparent Liability (NAL) set a base forfeiture amount of \$710,000, which was reduced to \$144,344 based on the statutory maximum permitted under Section 503(b)(2)(D) of the Act. This amount pales in comparison to penalties for other violations of Commission rules and is simply not enough to serve as a sufficient deterrent against operating pirate radio stations. The duration in which this pirate operated emphasizes this point. This is why I applaud bipartisan legislation introduced in the House of Representatives, the "Preventing Illegal Radio Abuse Through Enforcement Act," or PIRATE Act, which considers raising the statutory maximum to \$2 million and increasing the statute of limitations.

Second, the item affirmatively declares that the Commission is not required to issue a citation to those operating a pirate radio station. Specifically, the item states that "[t]he citation requirement in Section 503(b)(5) does not apply 'if the person involved is engaging in activities for which a license, permit, certificate, or other authorization is required....'" I agree with this interpretation. Beyond not being required by law, in many instances involving pirate radio, issuing a citation, or Notice of Unlicensed Operations (NOUO), can be counterproductive. In a game of whack-a-mole, locating and taking enforcement action against pirate operators is tough enough. Warning enterprise pirates that you are on to them can send them underground, or onto another frequency, increasing the time it takes to get the pirate off the air. Despite this being clear in law today, the PIRATE Act reemphasizes this legal authority and requires the Commission, absent good cause, to go straight to a NAL in pirate enforcement actions.

Third, beyond just going after the pirate operator, today's item takes enforcement action against intentional violations of our rules by the landlords. I firmly believe that this is a vital step towards ending the practice of pirate radio operations. If the pirate is unable to find partners that enable the operation, it will have a hard time accessing our airwaves. In this case, the Sidos were warned by the Commission about the pirate operations on numerous occasions over multiple years. Despite this, the Sidos funded much of the operation, including the Internet connection and electrical power services, as well as provided access to a shed where the illegal operations took place. Their submitted response is both unconvincing and contrary to documented facts. Today's item will set clear Commission precedent going forward that landlords who materially assist with unlawful pirate operations can be held jointly and severally liable for such violations. This precedent, coupled with the enhanced tools for holding landlords liable provided in the PIRATE Act, will greatly enhance the Commission's ability to stop pirate operations.

Finally, on a larger note, the issue of pirate radio is a real problem that is becoming more noticeable in more markets. When I first began focusing on this issue, we knew that Florida, New York, and New Jersey were problematic areas. However, we are constantly learning about new markets where pirates have launched operations, including in Colorado and North Carolina. This means that we must continue our crackdown against both pirate operators and landlords that knowingly facilitate this unlawful activity. I thank Chairman Pai and the bureau for their focus on this issue, as well as legislators in the House of Representatives, particularly Representatives Lance, Tonko, and Collins, whose PIRATE Act, if

passed, will enhance the Commission's tools to police the airwaves and put an end to such efforts that cause harm to local broadcasting licensees and American listeners. The fight continues.