

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

| | | |
|-----------------------|---|---------------------------------------|
| In the Matter of |) | |
| |) | |
| Gerlens Cesar, |) | File No.: EB-MC-00000049 ¹ |
| Boston, Massachusetts |) | EB-FIELDNER-17-00024874 |
| |) | EB-FIELDNER-17-00025344 |
| |) | EB-FIELDNER-19-00029169 |
| |) | Acct. No: 201932010003 |
| |) | FRN: 0028819951 |
| |) | |

ORDER

Adopted: June 22, 2020

Released: July 1, 2020

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

1. Unlicensed radio stations create a danger of interference to licensed communications, including other broadcasters, aviation, and public safety frequencies. Such operations also undermine the Commission’s authority over broadcast radio operations. On December 16, 2019, we issued a Notice of Apparent Liability for Forfeiture (*Notice*)² in the amount of \$453,015 against Gerlens Cesar for apparently violating section 301 of the Communications Act of 1934, as amended (Act),³ by operating an unauthorized broadcast radio station on 90.1 MHz from a location in Boston, Massachusetts, and on 92.1 MHz from locations in Brockton and Malden, Massachusetts. In responding to the *Notice*, Cesar sought cancellation or reduction of the forfeiture based on his inability to pay.⁴ After reviewing Cesar’s financial information demonstrating that he lacks the financial resources to pay the full forfeiture proposed in the *Notice*, and after an agent in the Enforcement Bureau’s Boston Field Office confirmed that Cesar’s station is no longer operating on 90.1 MHz or 92.1 MHz in and around Boston, Massachusetts, the Commission has entered into a Consent Decree to resolve its investigation into whether Cesar violated section 301 of the Act. To resolve this matter, Cesar admits that he violated section 301 of the Act, agrees to pay a civil penalty of \$5,000, and agrees to pay a further penalty of \$225,000 if he violates section 301 of the Act or triggers other specified events of default during the 20-year term of the Consent Decree.

2. After reviewing the terms of the Consent Decree and evaluating the facts before us, we find that the public interest would be served by adopting the Consent Decree and resolving the *Notice* regarding Cesar’s compliance with section 301 of the Act, which prohibits the operation of radio transmitters without the Commission’s prior authorization.⁵

¹ The investigation began under File No. EB-FIELDNER-17-00024874, was continued under File Nos. EB-FIELDNER-17-00025344 and EB-FIELDNER-19-00029169, and was subsequently assigned File No. EB-MC-00000049. Any future correspondence with the Commission concerning this matter should reflect the new case number.

² *Gerlens Cesar, Boston, Massachusetts*, Notice of Apparent Liability for Forfeiture, 34 FCC Rcd 12734 (2019).

³ 47 U.S.C. § 301.

⁴ Response to Notice of Apparent Liability for Forfeiture of Gerlens Cesar, File Nos. EB-FIELDNER-17-00024874, EB-FIELDNER-17-00025344, EB-FIELDNER-19-00029169, and EB-MC-00000049 (filed Feb. 14, 2020).

⁵ *Id.*

3. In the absence of material new evidence relating to this matter, we do not set for hearing the question of Cesar's basic qualifications to hold or obtain any Commission license or authorization.⁶

4. Accordingly, **IT IS ORDERED** that, pursuant to sections 4(i) and 503(b) of the Act,⁷ the attached Consent Decree **IS ADOPTED** and its terms incorporated by reference.

5. **IT IS FURTHER ORDERED** that the above-captioned matter **IS TERMINATED** and the *Notice* **IS RESOLVED** in accordance with the terms of the attached Consent Decree.

6. **IT IS FURTHER ORDERED** that a copy of this Order and Consent Decree shall be sent by first class mail and certified mail, return receipt requested, to Gerlens Cesar at his last known address and to Michael W. Richards, Esq., 7008 Westmoreland Avenue, Suite E-8, Takoma Park, Maryland 20912.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

⁶ See 47 CFR § 1.93(b).

⁷ 47 U.S.C. §§ 154(i), 503(b).

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CONSENT DECREE

1. Unlicensed radio stations create a danger of interference to licensed communications, including other broadcasters, aviation, and public safety frequencies. Such operations also undermine the Commission’s authority over broadcast radio operations. The Federal Communications Commission and Gerlens Cesar, by their authorized representatives, hereby enter into this Consent Decree for the purpose of terminating the Enforcement Bureau’s investigation into whether Cesar violated section 301 of the Communications Act of 1934, as amended (Act), in connection with Cesar’s operation of an unauthorized radio broadcast station on 90.1 MHz and 92.1 MHz in and around Boston, Massachusetts. To resolve this matter, Cesar admits that he violated section 301 of the Act, agrees to pay a civil penalty of \$5,000, and agrees to pay a further penalty of \$225,000 upon an Event of Default during the 20-year term of this Consent Decree, as described below.¹

I. DEFINITIONS

2. For the purposes of this Consent Decree, the following definitions shall apply:
- (a) “Act” means the Communications Act of 1934, as amended,² including the Preventing Illegal Radio Abuse Through Enforcement Act.³
 - (b) “Adopting Order” means an order of the Commission adopting the terms of this Consent Decree without change, addition, deletion, or modification.
 - (c) “Bureau” means the Enforcement Bureau of the Federal Communications Commission.
 - (d) “CD Acct No.” means account number 201932010003, associated with payment obligations described in paragraphs 12 and 14 of this Consent Decree.
 - (e) “Cesar” means Gerlens Cesar.
 - (f) “Commission” and “FCC” mean the Federal Communications Commission and all of its bureaus and offices.
 - (g) “Communications Laws” means collectively, the Act, the Rules, and the published and promulgated orders and decisions of the Commission to which Cesar is subject by virtue of its business activities, including but not limited to the Rules.

¹ See paras. 14 – 15, *infra*.

² 47 U.S.C. §§ 151 *et seq.*

³ Preventing Illegal Radio Abuse Through Enforcement Act, Pub. L. 116-109, 134 Stat. 3 (2020) (codified at 47 U.S.C. § 511).

- (h) “Effective Date” means the date by which both the Commission and Cesar have signed the Consent Decree and the Commission has released an Adopting Order.
- (i) “Investigation” means the investigation commenced by the Bureau in EB-FIELDNER-17-00024874, EB-FIELDNER-17-00025344, EB-FIELDNER-19-00029169, and EB-MC-00000049 regarding whether Cesar violated the Communications Laws, including section 301 of the Act.
- (j) “Notice” means the Notice of Apparent Liability for Forfeiture issued to Cesar on December 16, 2019, proposing a forfeiture of \$453,015 for apparent violations of the Communications Laws.⁴
- (k) “Parties” means Cesar and the Commission, each of which is a “Party.”
- (l) “Pirate Radio Broadcasting” means the transmission of communications on spectrum frequencies between 535 and 1705 kHz, inclusive, or 87.7 and 108 MHz, inclusive, without a license issued by the Commission, but does not include unlicensed operations in compliance with part 15 of the Rules.⁵
- (m) “Response” means Cesar’s response to the *Notice*, submitted to the Commission on February 14, 2020.
- (n) “Rules” means the Commission’s regulations found in title 47 of the Code of Federal Regulations.

II. BACKGROUND

3. 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.”⁶ Pirate Radio Broadcasting violates section 301 of the Act, and undermines the Commission’s efforts to manage radio spectrum and can interfere with licensed communications, including authorized broadcasts and public safety transmissions. Moreover, stations engaged in Pirate Radio Broadcasting do not broadcast Emergency Alert Service messages, and so create a public safety hazard for their listeners.

4. Cesar operates a station known as “Radio TeleBoston” as an online streaming audio service⁷ and previously operated the station as an unlicensed radio broadcast station. Following a lengthy investigation by the Bureau, on December 16, 2019, the Commission issued the *Notice* in which it found that Cesar apparently willfully violated section 301 of the Act by operating an unauthorized FM transmitter on 90.1 MHz from a location in Boston, Massachusetts, and by operating unauthorized FM transmitters on 92.1 MHz from locations in Brockton and Malden, Massachusetts. The *Notice* proposed an aggregate forfeiture of \$453,015 for Cesar’s apparent willful and continuing violations of section 301 of the Act. In his Response, Cesar provided evidence demonstrating that he lacked the ability to pay the forfeiture proposed in the *Notice*. Separately, one of the Bureau’s field agents determined that Radio TeleBoston is no longer operating on 90.1 MHz or 92.1 MHz in the Boston area. Based on Cesar’s demonstrated inability to pay the forfeiture proposed in the *Notice*, coupled with the cessation of unauthorized broadcasts of Radio TeleBoston on 90.1 MHz and 92.1 MHz, the Commission and Cesar enter into this Consent Decree and agree to the following terms and conditions.

⁴ *Gerlens Cesar, Boston, Massachusetts*, Notice of Apparent Liability for Forfeiture, 34 FCC Rcd 12734 (2019).

⁵ See 47 U.S.C. § 511(h).

⁶ 47 U.S.C. § 301.

⁷ This Consent Decree only applies to Cesar’s violations of section 301 of the Act associated with the broadcasting of Radio TeleBoston on 90.1 MHz and 92.1 MHz and does not penalize or otherwise impair his ability to operate an online streaming audio service.

III. TERMS OF AGREEMENT

5. **Adopting Order.** The provisions of this Consent Decree shall be incorporated by the Commission in an Adopting Order.

6. **Jurisdiction.** Cesar agrees that the Commission has jurisdiction over it and the matters contained in this Consent Decree and has the authority to enter into and adopt this Consent Decree.

7. **Effective Date; Violations.** The Parties agree that this Consent Decree shall become effective on the Effective Date as defined herein. As of the Effective Date, the Parties agree that this Consent Decree shall have the same force and effect as any other order of the Commission.

8. **Termination of Investigation.** In express reliance on the covenants and representations in this Consent Decree and to avoid further expenditure of public resources, the Commission agrees to terminate the Investigation. In consideration for the termination of the Investigation, Cesar agrees to the terms, conditions, and procedures contained herein. The Commission further agrees that, in the absence of new material evidence, it will not use the facts developed in the Investigation through the Effective Date, or the existence of this Consent Decree, to institute any new proceeding on its own motion against Cesar concerning the matters that were the subject of the Investigation, or to set for hearing the question of Cesar's basic qualifications to be a Commission licensee or hold Commission licenses or authorizations.⁸

9. **Admission of Liability.** Cesar admits for the purpose of this Consent Decree and for Commission civil enforcement purposes, and in express reliance on the provisions of paragraph 8 herein, that his actions summarized in paragraph 4 violated section 301 of the Act.

10. **Compliance Commitment.** Cesar has ceased committing acts of Pirate Radio Broadcasting and in the future will not commit, or provide material assistance to another committing, acts of Pirate Radio Broadcasting. The commission of any act of Pirate Radio Broadcasting or the provision of material assistance to another committing acts of Pirate Radio Broadcasting by Cesar will violate section 301 of the Act and the terms of this Consent Decree. Cesar will report any noncompliance with section 301 of the Act or with the terms and conditions of this Consent Decree within fifteen (15) calendar days of such noncompliance to Field Director, Office of the Field Director, Enforcement Bureau, Federal Communications Commission, 445 12th Street, S.W., Washington, DC 20554, with a copy submitted electronically to field@fcc.gov; any failure to report such noncompliance will violate the terms of this Consent Decree.

11. **Disposal of Broadcast Equipment.**

- (a) Within seven (7) calendar days following the Effective Date, Cesar shall submit to the Bureau's Office of the Field Director (at the postal and e-mail addresses specified in paragraph 10) a written inventory of all FM transmitters, power amplifiers, antennas, and antenna feed lines (collectively, the Broadcast Equipment) in Cesar's possession as of the Effective Date (Inventory). The Inventory shall identify each piece of Broadcast Equipment by manufacturer, model, serial number, and quantity.
- (b) Within thirty (30) calendar days following the Effective Date, Cesar shall submit to the Bureau's Office of the Field Director (at the postal and e-mail addresses specified in paragraph 10) a certificate issued by a recycling facility that has been certified under Sustainable Electronics Recycling International's R2:2013 standard⁹ and confirming that the issuer has destroyed through the recycling process all of the Broadcasting Equipment set forth on the Inventory.

⁸ See 47 CFR § 1.93(b).

⁹ See <https://sustainableelectronics.org/recyclers>.

12. **Termination Date.** Unless stated otherwise, the requirements set forth in paragraph 10 of this Consent Decree shall expire twenty (20) years after the Effective Date.

13. **Civil Penalty.** Cesar will pay a civil penalty to the United States Treasury in the amount of Five Thousand Dollars (\$5,000) within thirty (30) calendar days of the Effective Date (Civil Penalty). Cesar acknowledges and agrees that upon execution of this Consent Decree, the Civil Penalty shall become a “Claim” or “Debt” as defined in 31 U.S.C. § 3701(b)(1).¹⁰ Upon an Event of Default (as defined below in paragraph 15), all procedures for collection as permitted by law may, at the Commission’s discretion, be initiated. Cesar shall send electronic notification of payment to field@fcc.gov on the date said payment is made. Payment of the Civil Penalty must be made by credit card, ACH (Automated Clearing House) debit from a bank account using the Commission’s Fee Filer (the Commission’s online payment system),¹¹ or by wire transfer. The Commission no longer accepts Civil Penalty payments by check or money order. Below are instructions that payors should follow based on the form of payment selected:¹²

- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. A completed Form 159 must be faxed to the Federal Communications Commission at 202-418-2843 or e-mailed to RROGWireFaxes@fcc.gov on the same business day the wire transfer is initiated. Failure to provide all required information in Form 159 may result in payment not being recognized as having been received. When completing FCC Form 159, enter the Account Number in block number 23A (call sign/other ID), enter the letters “FORF” in block number 24A (payment type code), and enter in block number 11 the FRN(s) captioned above (Payor FRN).¹³ For additional detail and wire transfer instructions, go to <https://www.fcc.gov/licensing-databases/fees/wire-transfer>.
- Payment by credit card must be made by using the Commission’s Fee Filer website at <https://apps.fcc.gov/FeeFiler/login.cfm>. To pay by credit card, log-in using the FRN captioned above. If payment must be split across FRNs, complete this process for each FRN. Next, select “Pay bills” on the Fee Filer Menu, and select the bill number associated with the CD Acct. No. – the bill number is the CD Acct. No. with the first two digits excluded – and then choose the “Pay by Credit Card” option. IMPORTANT NOTE: there is a \$24,999.99 limit on credit card transactions.
- Payment by ACH must be made by using the Commission’s Fee Filer website at <https://apps.fcc.gov/FeeFiler/login.cfm>. To pay by ACH, log in using the FRN captioned above. If payment must be split across FRNs, complete this process for each FRN. Next, select “Pay bills” on the Fee Filer Menu and then select the bill number associated with the CD Acct. No. – the bill number is the CD Acct. No. with the first two digits excluded (e.g., NAL 1912345678 = FCC bill Number 12345678) – and choose the “Pay from Bank Account” option. Please contact the appropriate financial institution to confirm the correct Routing Number and the correct account number from which payment will be made and verify with that financial institution that the designated account has authorization to accept ACH transactions.

14. **Suspended Penalty.** Cesar further agrees that, upon an Event of Default (as described below in paragraph 15), he will pay a further civil penalty to the United States Treasury in the amount of

¹⁰ Debt Collection Improvement Act of 1996, Pub. L. No. 104-134, 110 Stat. 1321, 1358 (Apr. 26, 1996).

¹¹ Payments made using the Commission’s Fee Filer system do not require the submission of an FCC Form 159.

¹² For questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone at 1-877-480-3201 (option #6), or by e-mail at ARINQUIRIES@fcc.gov.

¹³ Instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

Two Hundred Twenty-Five Thousand Dollars (\$225,000) (Additional Civil Penalty). Cesar acknowledges and agrees that upon an Event of Default, the Additional Civil Penalty shall also become a “Claim” or “Debt” as defined in 31 U.S.C. § 3701(b)(1), and all procedures for collection of the Additional Civil Penalty may, at the Commission’s discretion, be initiated against Cesar.

15. **Event of Default.** Cesar agrees that an Event of Default shall occur upon (a) the failure to pay the Civil Penalty to the U.S. Treasury on or before the date specified in paragraph 13; (b) the failure to comply with paragraph 11(b); (c) the release of an order within twenty (20) years of the Effective Date by the Bureau or the Commission, such as a Notice of Apparent Liability for Forfeiture that is uncontested or a Forfeiture Order, finding that Cesar committed an act of Pirate Radio Broadcasting, in violation of section 301 of the Act; (d) an admission of noncompliance, or any failure to report such noncompliance, required by paragraph 10; or (e) the release of an order by the Commission finding that Cesar materially misstated his financial condition in the documents he produced to support his claim that he lacks the financial resources to pay the forfeiture proposed in the *Notice*.

16. **Interest, Charges for Collection, and Acceleration of Maturity Date.** After an Event of Default has occurred under this Consent Decree, the then unpaid amount of the Civil Penalty and the Additional Civil Penalty shall accrue interest, computed using the U.S. Prime Rate in effect on the date of the Event of Default plus 4.75%, from the date of the Event of Default until payment in full. Upon an Event of Default, the then unpaid amount of the Civil Penalty and the Additional Civil Penalty, together with interest, any penalties permitted and/or required by the law, including but not limited to 31 U.S.C. § 3717 and administrative charges, plus the costs of collection, litigation, and attorneys’ fees, shall become immediately due and payable, without notice, presentment, demand, protest, or notice of protest of any kind, all of which are waived by Cesar.

17. **Waivers.** As of the Effective Date, Cesar waives any and all rights it may have to seek administrative or judicial reconsideration, review, appeal or stay, or to otherwise challenge or contest the validity of this Consent Decree and the Adopting Order. Cesar shall retain the right to challenge Commission interpretation of the Consent Decree or any terms contained herein. If either Party (or the United States on behalf of the Commission) brings a judicial action to enforce the terms of the Consent Decree or the Adopting Order, neither Cesar nor the Commission shall contest the validity of the Consent Decree or the Adopting Order, and Cesar shall waive any statutory right to a trial *de novo*. Cesar hereby agrees to waive any claims it may otherwise have under the Equal Access to Justice Act¹⁴ relating to the matters addressed in this Consent Decree.

18. **Severability.** The Parties agree that if any of the provisions of the Consent Decree shall be held unenforceable by any court of competent jurisdiction, such unenforceability shall not render unenforceable the entire Consent Decree, but rather the entire Consent Decree shall be construed as if not containing the particular unenforceable provision or provisions, and the rights and obligations of the Parties shall be construed and enforced accordingly.

19. **Invalidity.** In the event that this Consent Decree in its entirety is rendered invalid by any court of competent jurisdiction, it shall become null and void and may not be used in any manner in any legal proceeding.

20. **Subsequent Rule or Order.** The Parties agree that if any provision of the Consent Decree conflicts with any subsequent Rule or order adopted by the Commission (except an order specifically intended to revise the terms of this Consent Decree to which Cesar does not expressly consent) that provision will be superseded by such Rule or order.

21. **Successors and Assigns.** Cesar agrees that the provisions of this Consent Decree shall be binding on its successors, assigns, and transferees.

¹⁴ See 5 U.S.C. § 504; 47 CFR §§ 1.1501–1.1530.

22. **Final Settlement.** The Parties agree and acknowledge that this Consent Decree shall constitute a final settlement between the Parties with respect to the Investigation.
23. **Modifications.** This Consent Decree cannot be modified without the advance written consent of both Parties.
24. **Paragraph Headings.** The headings of the paragraphs in this Consent Decree are inserted for convenience only and are not intended to affect the meaning or interpretation of this Consent Decree.
25. **Authorized Representative.** Each Party represents and warrants to the other that it has full power and authority to enter into this Consent Decree. Each person signing this Consent Decree on behalf of a Party hereby represents that he or she is fully authorized by the Party to execute this Consent Decree and to bind the Party to its terms and conditions.
26. **Counterparts.** This Consent Decree may be signed in counterpart (including electronically or by facsimile). Each counterpart, when executed and delivered, shall be an original, and all of the counterparts together shall constitute one and the same fully executed instrument.

Rosemary C. Harold
Chief
Enforcement Bureau

Date

Gerlens Cesar

Date

**STATEMENT OF
COMMISSIONER MICHAEL O'RIELLY**

Re: Gerlens Cesar, Boston, Massachusetts, EB-MC-0000049

Addressing the scourge of pirate radio has been important to me and this Commission. It's been well-established that unlawful, unlicensed broadcasts can interfere with public safety and aviation transmissions, as well as the operations of licensed broadcasters, who pour enormous effort and resources into serving their local communities. The illegal operators also put listeners at greater risk by neglecting key broadcaster responsibilities, such as providing emergency alerts. Further, protecting the integrity of the Commission's licensing of the electromagnetic spectrum is one of the Commission's most fundamental duties and must remain a priority.

Today, we take enforcement action against two long-standing and well-known pirate broadcasters in the Boston market, and I want to commend all the Commission staff from the Enforcement Bureau who have worked hard on these cases, both here in Washington and in the field. I had the privilege of visiting our Boston office last fall, and I am very grateful to that team for their incredible diligence in tracking and investigating these unlawful broadcasts.

One aspect of pirate radio that has certainly been surprising, over the many years I've worked with our enforcement staff on this issue, is the support some pirates receive from advertisers and others, including politicians. Boston has, historically, been a particularly troublesome market in this respect, with pirates operating seemingly unabated, and with the full support of certain patrons. While the consent decrees and accompanying fines that we issue today are very low compared to other Commission enforcement actions, I am hopeful that our actions will be effective in ending these problematic broadcasts and deterring future ones, both in the Boston market and across the country. And, with the recent PIRATE Act being signed into law by President Trump, the Commission will have even more tools at our disposal to end these broadcasts. Future pirate radio operators should expect to face much more extensive penalties.

I once again thank all the staff involved and am hopeful that other pirate broadcasters will take notice. This Commission is coming for you.