

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

In the Matter of)	
)	
César Ayora and Luis Angel Ayora)	File No.: EB-FIELDNER-17-00023506
Queens, New York)	NAL/Acct No.: 202332010001
)	FRNs: 0033397985, 0033398017

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: March 14, 2023

Released: March 15, 2023

By the Commission:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture (NAL), we propose a penalty of \$2,316,034 against César Ayora and Luis Angel Ayora (collectively, the Ayoras), jointly and severally, for operating an unauthorized radio station on 105.5 MHz in Queens, New York. The Ayoras appear to have jointly engaged in the longstanding illicit operation of an unauthorized radio station known as Radio Impacto 2. Operating an unauthorized, or pirate, radio station is illegal under the Communications Act of 1934, as amended (Communications Act or Act).¹ Pirate radio stations undermine the Commission's primary mission to manage radio spectrum. Such illegal operations can interfere with licensed communications, including authorized broadcasts and communications by 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 transmissions that provide vital information regarding weather and other dangers to the public.² Some of the most egregious pirate radio operations are run by individuals who have ignored prior enforcement actions by the Commission. This is one such case. As such, it merits the strongest possible enforcement measures to the fullest extent of the law.

II. BACKGROUND

A. Legal Framework

2. On January 24, 2020, Congress passed the Preventing Illegal Radio Abuse Through Enforcement Act (PIRATE Act), which was subsequently codified as section 511 of the Communications Act.³ Section 511 states that any person who willfully and knowingly does or causes or suffers to be done any pirate radio broadcasting shall be subject to a fine of not more than \$2,000,000 and not more than \$100,000 for each day during which such offense occurs.⁴ Section 511 defines pirate radio broadcasting

¹ 47 U.S.C. § 511.

² See *Amendment of Part 11 of the Commission's Rules Regarding the Emergency Alert System*, Report and Order, PS Docket No. 15-94, FCC 22-75, para. 3 (rel. Sept. 30, 2022).

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

⁴ 47 U.S.C. § 511(a)-(b); see 47 CFR 1.80(b)(6) (setting the current inflation adjusted statutory maximum for a violation of 47 U.S.C. § 511(a) at \$2,316,034 and 47 U.S.C. § 511(b) at \$115,802); *Amendment of Section 1.80(b) of* (continued....)

as “the transmission of communications on spectrum frequencies between 535 and 1705 kilohertz, inclusive, or 87.7 and 108 megahertz, inclusive, without a license issued by the Federal Communications Commission (Commission), but does not include unlicensed operations in compliance with part 15 of title 47, Code of Federal Regulations.”⁵ Part 15, among other requirements, states that unlicensed operators in the FM band must not transmit over a certain power limit.⁶ Moreover, under part 15, intentional radiators, such as FM transmitters, must be designed to ensure that no antenna other than that furnished by the responsible party shall be used with the device (*e.g.*, a permanently attached antenna or an antenna that uses a unique coupling to the intentional radiator).⁷

B. Factual Background

1. Pre-PIRATE Act Investigation

3. César and Luis Angel Ayora⁸ have operated a pirate radio station on 91.9 MHz and later 105.5 MHz, in Queens, New York, for years.⁹ The station’s website states that “[t]he brothers César and [Luis] Angel Ayora in September 2008 founded the first Ecuadorian FM radio station in New York City. . . . The station never sleeps, because a team of communication professionals are working for you 24 hours

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the Commission’s Rules, Adjustment of Civil Monetary Penalties to Reflect Inflation, Order, DA 22-1356, 2022 WL 18023008, at *5 (EB Dec. 23, 2022); *see also* Annual Adjustment of Civil Monetary Penalties to Reflect Inflation, 88 Fed. Reg. 783 (Jan. 5, 2023) (setting January 15, 2023, as the effective date for the increases). Prior to the passage of the PIRATE Act, the maximum monetary penalty for pirate radio transmissions was set at \$151,005. *Acerome Jean Charles*, Notice of Apparent Liability, 34 FCC Rcd 12744 (2019).

⁵ 47 U.S.C. § 511(h).

⁶ 47 CFR § 15.239(b) (stating that the field strength of any emissions in the 88-108 MHz band shall not exceed 250 microvolts/meter at 3 meters).

⁷ 47 CFR § 15.203.

⁸ Luis Angel Ayora also uses the name Angel Ayora. *See, e.g.*, Radio Impacto 2, Quienes Somos, <http://impactosatelital.com/noticias> (last visited Dec. 7, 2022) (using the name Angel Ayora); César Ayora, *Radio Impacto 2 Entrevista Ecuavisa YouTube*, YouTube (July 30, 2012) <https://www.youtube.com/watch?v=MsSubPgAo1s> (interview with César and Luis Angel Ayora regarding Radio Impacto 2) (last visited Dec. 7, 2022) (using the name Angel Ayora); *see also* Ayora, Luis Angel (luisangel.ayora.3), Facebook, <https://www.facebook.com/luisangel.ayora.3/> (using the name Luis Angel Ayora).

⁹ *See* Radio Impacto 2, Quienes Somos, <http://impactosatelital.com/noticias> (last visited Dec. 7, 2022) (describing the founding in 2008 and continued operation of the station by César Ayora and Luis Angel Ayora and the switch from 91.9 MHz to 105.5 MHz in 2016). During its pre-PIRATE Act investigation, the Commission was unaware of the involvement of César Ayora in the operation of Radio Impacto 2. However, in addition to the Radio Impacto 2 website, multiple sources confirm that the Ayoras operate Radio Impacto 2 together. *See, e.g.*, ONDA POSITIVA, *RADIO IMPACTO 2 César Ayora “El Sueño, Americano”*, YouTube (Dec. 24, 2021), <https://www.youtube.com/watch?v=0mT0317qZi0> (confirming that César Ayora has operated Radio Impacto 2 for 13 years) (last visited Nov. 3, 2022); ONDA POSITIVA, *Gerardo Morán DE FOTOGRAFO ! /Me dan posada en Radio Impacto 2 New York*, YouTube (Dec. 17, 2021), <https://www.youtube.com/watch?v=pQ5X3EnsMoo> (interview with César Ayora with a tour of the Radio Impacto 2 studio) (last visited Nov. 3, 2022); Lejos De Mi Patria, *Juanita Burbano entrevista a Angel & Cesar Ayora de La Radio 91.9fm 5c*, YouTube (July 30, 2012), <https://www.youtube.com/watch?v=vtii7HJV-pY> (interview confirming that César and Luis Angel Ayora operate Radio Impacto 2 together); César Ayora, *Radio Impacto 2 Entrevista Ecuavisa YouTube*, YouTube (July 30, 2012), <https://www.youtube.com/watch?v=MsSubPgAo1s> (interview with César and Luis Angel Ayora regarding Radio Impacto 2) (last visited Dec. 7, 2022); Ayora, Luis Angel (luisangel.ayora.3), Facebook, <https://www.facebook.com/luisangel.ayora.3/> (advertising Radio Impacto 2 105.5 and the Rockola.com program) (last visited Dec. 7, 2022); Ayora, César (ayora.cesar.1), Facebook, <https://www.facebook.com/ayora.cesar.1>, (stating that César Ayora works at Radio Impacto 2) (last visited Dec. 7, 2022).

a day. . . .”¹⁰ The station is known as Radio Impacto 2,¹¹ and Enforcement Bureau (Bureau) field agents (Agents) have confirmed that the station identified itself on the air as Radio Impacto 2 on multiple occasions. The Commission first became aware of the Ayoras’ pirate radio station in 2013 when, in response to complaints, the Bureau issued three Notices of Unauthorized Operation (NOUOs) to Luis Angel Ayora.¹² The NOUOs stated that his unauthorized operation of the station was illegal, and that continued operation of it could result in further enforcement action. Each NOUO contained the directive that unlicensed operation of the radio station must be discontinued immediately.¹³ The Ayoras, however, did not discontinue operation. On May 29, 2014, in response to complaints, Agents from the New York Field Office (New York Office) located the source of radio transmissions on 91.9 MHz to an FM transmitter antenna at an apartment building at 41-15 Warren Street, Queens, New York (Warren Street site).¹⁴ The Agents took field strength measurements of the station’s signal and determined that it exceeded the limits for operation under part 15 of the Commission’s rules.¹⁵ Commission records indicated no authorization for any FM broadcast station to operate at or near the Warren Street site on any frequency during the pertinent time period. The building’s owner identified Luis Angel Ayora as the owner of the radio transmitter for the unauthorized station.¹⁶ The owner of the building then called Luis Angel Ayora, who came to the building to claim the equipment and admitted to the Agents that he owned and installed the equipment and operated the pirate radio station.¹⁷ The Agents then hand delivered another NOUO to Luis Angel Ayora and verbally warned him that operation of the unauthorized radio station violated the Act, must cease immediately, and could subject him to significant forfeitures.¹⁸ Despite these warnings, on January 13, 2015, in response to additional complaints of unauthorized operation, Agents from the New York Office determined that Radio Impacto 2 continued to operate above the part 15 power limits without authorization on 91.9 MHz in Queens New York.¹⁹ As a result, on April 14, 2015, the Bureau issued a Notice of Apparent Liability for Forfeiture (2015 NAL) against Luis Angel

¹⁰ See Radio Impacto 2, Quienes Somos, <http://impactosatelital.com/noticias> (last visited Dec. 7, 2022) (translated from Spanish “Los hermanos César y Angel Ayora en septiembre del 2008 fundaron la primera radio ecuatoriana en fm en la ciudad de New York. . . . La estación que nunca duerme, por que un equipo de profesionales de la comunicación están trabajando para usted las 24 horas. . . .”).

¹¹ See Radio Impacto 2, Objetivos Generales, <http://impactosatelital.com> (last visited Dec. 7, 2022).

¹² See *Angel Ayora*, Notice of Unlicensed Operation (New York Field Office, June 10, 2013), <https://www.fcc.gov/document/angel-ayora-queens-ny-2>; *Angel Ayora*, Notice of Unlicensed Operation (New York Field Office, July 12, 2013) <https://www.fcc.gov/document/angel-ayora-queens-ny-1>; *Angel Ayora*, Notice of Unlicensed Operation (New York Field Office, Aug. 1, 2013), <https://www.fcc.gov/document/angel-ayora-queens-ny-0>. At that time, the Bureau was not aware that César Ayora was also involved in the station’s operation. Subsequently, the Bureau determined that, based upon the pirate station’s own promotional materials, César Ayora co-founded and participated in station operations since 2008.

¹³ *Id.* (three NOUOs in 2013).

¹⁴ *Luis Angel Ayora, Queens New York*, Notice of Apparent Liability 30 FCC Rcd 3621, para. 2 (EB 2015) (2015 NAL).

¹⁵ Section 15.239 of the Commission’s rules provides that non-licensed broadcasting in the 88-108 MHz band is permitted only if the field strength of the transmission does not exceed 250 microvolts per meter (“µV/m”) at three meters. 47 CFR § 15.239(b). Measurements showed that the field strength of the station’s signal exceeded the permissible level for a non-licensed part 15 transmitter.

¹⁶ 2015 NAL, 30 FCC Rcd at 3621, para. 2.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.* at 3621-3622, para. 3.

Ayora for operating an unauthorized station.²⁰ The Bureau received no response to the 2015 NAL. On June 2, 2015, the Bureau issued a \$20,000 forfeiture order against Luis Angel Ayora for operating this unauthorized radio station.²¹ The Bureau received no response to the order, and the forfeiture was never paid.²²

4. The Ayoras continued to operate their pirate radio station. From July 21, 2015, to October 17, 2016, Agents from the New York Office, using direction-finding techniques, located Radio Impacto 2's signal seven times and each time found that the signal exceeded the part 15 power limits for operating without a license.²³ Commission records indicated no authorization for any FM broadcast station to operate at or near any of the transmission locations on any frequency during the pertinent time period. Consequently, on November 17, 2016, the U.S. Marshals Service, assisted by a multi-agency team comprised of FCC Field Agents, FCC Field Counsel, and members of the NY/NJ Fugitive Task Force, executed a warrant *in rem* issued by the U.S. District Court of the Eastern District of New York and seized the equipment that the Ayoras used to operate Radio Impacto 2 from its studio located at 91-16 43rd Avenue, Elmhurst NY, 11373.²⁴

5. The seizure of their equipment by federal agents did not deter the Ayoras from continuing to operate their pirate radio station. On March 23, 2017, acting on a complaint regarding a pirate radio operator in Queens, New York, Agents from the New York Office began investigating and observed Radio Impacto 2 operating on 91.9 MHz in Queens, New York. From March 23, 2017 to January 11, 2020, Agents from the New York Office located Radio Impacto 2's signal 11 times at multiple locations,²⁵ and each time found that it exceeded the part 15 power limit.²⁶ Commission records indicated no authorization for any FM broadcast station to operate at any of these locations on any frequency during the pertinent time period. COVID-19 travel restrictions prevented further onsite inspections until 2022.²⁷

2. PIRATE Act Investigation

6. The PIRATE Act, among other provisions, codified the definition of pirate radio,²⁸ increased fines for pirate radio operators,²⁹ and granted the Commission new enforcement authority to

²⁰ *Id.* at 3621.

²¹ *Luis Angel Ayora, Queens New York*, Forfeiture Order, 30 FCC Rcd 6033 (EB 2015).

²² The Department of Justice declined to pursue collection of the forfeiture. *See* letter from Robert L. Capers, U.S. Att'y to Off. of the Gen. Couns., Fed. Comm'ns Comm'n (Apr. 7, 2016) (on file EB-FIELDNER-17-00023506).

²³ 47 CFR § 15.239(b). On July 21, 2015; August 31, 2015; February 20, 2016; and July 5, 2016, Agents located the station transmitting from 91-16 43rd Avenue, Queens, New York. On August 26, 2015, Agents located the station transmitting from 95-09 41st Avenue, Queens, New York.

²⁴ *See* 47 U.S.C. § 510 (granting authority to the office of the United States Attorney General to seize equipment used in violation of sections 301 and 302 of the Act). Radio Impacto 2 continues to operate from this location. *See* Radio Impacto 2, Contactos, <http://impactosatelital.com/contactos> (last visited Dec. 7, 2022).

²⁵ The transmission sites of Radio Impacto 2's signal included 35-20 97th Street, Queens, New York; 97-01 Northern Boulevard, Queens, New York; 96-10 37th Avenue, Queens, New York; and 37-29 104th Street, Queens, New York.

²⁶ 47 CFR § 15.203.

²⁷ Agents were able to take measurements indicating the station was still on the air on November 14, 2020 and January 16, 2021.

²⁸ 47 U.S.C. § 511(h).

²⁹ *Id.* § 511(a)-(b).

assess forfeitures against any person who permits the operation of pirate radio broadcasting, such as the property owners whose property is used for pirate radio broadcasting.³⁰

7. In 2022, the Ayoras continued to operate Radio Impacto 2,³¹ including both Luis Angel Ayora³² and César Ayora³³ hosting their own weekly on-air programs. On March 26, 2022, an Agent from the New York Office resumed the long-standing investigation and observed Radio Impacto 2 operating on 105.5 MHz in Queens, New York.³⁴ Using direction-finding techniques, the Agent determined that the source of the signal of the unauthorized station was located at a multi-family dwelling at 95-09 41st Avenue, Queens, New York (41st Avenue Site). The Agent measured the strength of the station's signal and determined that the transmissions on 105.5 MHz exceeded the limits for operation under part 15 of the Commission's rules.³⁵ A review of Commission records reveals that no authorization exists for any FM broadcast station to operate at or near the 41st Avenue Site on any frequency at any time relevant to this NAL. The Agent also took photographs of the antenna used to broadcast the signal and determined that it used a standard coaxial connector and was not compliant with the part 15 rules.³⁶

8. On June 23, 2022, August 29, 2022, and September 24, 2022, Agents from the New York Office again found Radio Impacto 2 operating on 105.5 MHz. Using direction-finding techniques, the Agents determined that Radio Impacto 2 continued to transmit from the 41st Avenue Site. The Agents measured the strength of the station's signal and determined that the transmissions on 105.5 MHz exceeded the limits for operation under part 15 of the Commission's rules.³⁷ Commission records reflect

³⁰ See 47 U.S.C. § 511(a) (“Any person who willfully and knowingly does or causes *or suffers to be done* any pirate radio broadcasting shall be subject to a fine of not more than \$2,000,000.”) (emphasis added).

³¹ See Radio Impacto 2, Quienes Somos, <http://impactosatelital.com/noticias> (last visited Dec. 7, 2022) (describing the founding and continued operation of the station by César Ayora and Luis Angel Ayora).

³² See Radio Impacto 2, <http://impactosatelital.com> (last visited Dec. 7, 2022) (advertising the Rockola.com program hosted by Luis Angel Ayora). Both Luis Angel Ayora and Radio Impacto 2 have posted videos of the Rockola.com program on their respective Facebook accounts in the past year. See, e.g., Ayora, Luis Angel (luisangel.ayora.3), Facebook (Apr. 22, 2022), <https://www.facebook.com/luisangel.ayora.3/videos/1021132605449783> (last visited Dec. 7, 2022); Radio Impacto 2 (impacto2fm), Facebook, <https://www.facebook.com/impacto2fm/videos> (last visited Dec. 7, 2022). Videos of the Rockola.com program were posted on the Radio Impacto 2 Facebook account on April 22, 2022, <https://www.facebook.com/impacto2fm/videos/3187789138101870>; September 16, 2022, <https://www.facebook.com/impacto2fm/videos/1162472371291057>; October 28, 2022, <https://www.facebook.com/impacto2fm/videos/1200687210484441>; and November 4, 2022, <https://www.facebook.com/impacto2fm/videos/2080853242125524>.

³³ See Ayora, César (ayora.cesar.1), Facebook (Oct. 21, 2022) (<https://www.facebook.com/ayora.cesar.1/posts/pfbid0xWU6myEfzZ4a52Ga6fyoHZfVpaTMkG2kXxSy245jAJnZduXDfN1ArwsskEQQ2q4ol>) (advertising the weekly Sentimientos program hosted by César Ayora) (last visited Dec. 7, 2022); Radio Impacto 2 (impacto2fm), Facebook (Sept. 25, 2022) <https://www.facebook.com/impacto2fm/photos/10160577830749824> (advertising the weekly Sentimientos program hosted by César Ayora on 105.5 FM) (last visited Sept. 1, 2022).

³⁴ According to the Radio Impacto 2 website, the Ayoras started transitioning operation on 91.9 MHz to 105.5 MHz in 2016. See Radio Impacto 2, Quienes Somos, <http://impactosatelital.com/noticias> (last visited Dec. 7, 2022); see also ECUAMAN TV, *ENTREVISTA A CESAR AYORA IMPACTO TV*, YouTube (Dec. 5, 2017) <https://www.youtube.com/watch?v=E96f4aNCfz0> (interview with César Ayora stating that Radio Impacto 2 operated on 91.9 MHz for nine years before changing to 105.5 MHz) (last visited Dec. 7, 2022).

³⁵ 47 CFR §§ 15.209(a), 15.239(b).

³⁶ *Id.* § 15.203 (“[T]he use of a standard antenna jack or electrical connector is prohibited.”).

³⁷ *Id.* §§ 15.209(a), 15.239(b).

no authorization for any FM broadcast station to operate at or near the 41st Avenue Site on any frequency at any time relevant to this NAL. The Agents took additional photographs of the antenna used to broadcast the signal on each of these dates and determined that it was the same non-part 15 compliant antenna used to broadcast the signal since March 26, 2022.³⁸

9. Agents also discovered that Radio Impacto 2 advertises four ongoing weekly programs on its web site: (1) “Rockola.com” is co-hosted by Luis Angel Ayora and is broadcast every Friday; (2) “Análisis Sin Censura” is broadcast every Saturday; (3) “Sentimentos” hosted by César Ayora is broadcast every Sunday;³⁹ and (4) “Impacto Deportivo” is also broadcast every Sunday.⁴⁰ Thus, according to the illegal station’s own advertising, pirate radio broadcasting occurred at least an additional 77 times between the March 26, 2022 observation and the September 24, 2022 observation.⁴¹ Moreover, as previously discussed, Agents determined that the same non-part 15 compliant antenna was used by the Ayoras to broadcast just before and after this period.⁴²

III. DISCUSSION

10. We find that the Ayoras apparently willfully and knowingly violated section 511 of the Act⁴³ by operating a pirate radio station on 105.5 MHz from March 26, 2022 to September 24, 2022. On March 26, 2022, June 23, 2022, August 29, 2022, and September 24, 2022, an Agent observed the Ayoras’ pirate radio station, Radio Impacto 2, operating at the 41st Avenue Site. Agents also took field strength measurements and determined that these transmissions exceeded the limits for operation under part 15 of the Commission’s rules.⁴⁴ In addition, the Ayoras advertised Radio Impacto 2 programming on Fridays, Saturdays, and Sundays for the 25 weeks between the March 26, 2022 and the September 24, 2022 observations, totaling at least 77 apparent violations.⁴⁵ Agents determined that the antenna broadcasting all transmissions from the 41st Avenue Site from the March 26, 2022 observation to the September 24, 2022 observation was not compliant with the part 15 requirements.⁴⁶ Therefore, all transmissions from the 41st Avenue Site during this period failed to comply with part 15 of the Commission’s rules.⁴⁷ Commission records indicate no authorization for any FM broadcast station to

³⁸ 47 CFR § 15.203.

³⁹ See Ayora, César (ayora.cesar.1), Facebook (Oct. 21, 2022), (<https://www.facebook.com/ayora.cesar.1/posts/pfbid0xWU6myEfzZ4a52Ga6fyoHZfVpaTMkG2kXxSy245jAJnZduXdfN1ArwsskEQQ2q4ol>) (advertising the weekly Sentimentos program hosted by César Ayora) (last visited Dec. 7, 2022); Radio Impacto 2 (impacto2fm), Facebook (Sept. 25, 2022) <https://www.facebook.com/impacto2fm/photos/10160577830749824> (advertising the weekly Sentimentos program hosted by César Ayora on 105.5 FM) (last visited Sept. 1, 2022).

⁴⁰ Radio Impacto 2, <http://impactosatelital.com/> (last visited Dec. 7, 2022).

⁴¹ The on-scene observations made on June 23, which was a Monday, and August 29, a Thursday, are in addition to the violations established by Radio Impacto 2’s advertised programming.

⁴² See *supra* paras. 7-8.

⁴³ 47 U.S.C. § 511.

⁴⁴ 47 CFR §§ 15.209(a), 15.239(b); see also 47 U.S.C. § 511(h) (stating that pirate radio broadcasting “does not include unlicensed operations in compliance with part 15 of title 47, Code of Federal Regulations”).

⁴⁵ See *supra* para. 9.

⁴⁶ 47 CFR § 15.203.

⁴⁷ *Id.*; see also 47 U.S.C. § 511(h) (stating that pirate radio broadcasting “does not include unlicensed operations in compliance with part 15 of title 47, Code of Federal Regulations”).

operate at or near any of the Radio Impacto 2 transmission sites at any time relevant to the violations discussed in this NAL.

11. Considering the totality of the circumstances and facts before us, including the multiple violations documented during the pre-PIRATE Act investigations on each day of the week, the numerous apparent violations during the PIRATE Act investigation, including advertised weekend programming, the non-Part 15 compliant antenna used to broadcast the Radio Impacto 2 signal, the Radio Impacto 2 website stating that the station operates 24 hours a day,⁴⁸ and an interview with Luis Angel Ayora in which he admitted that the station operates on workdays after 5:00 pm,⁴⁹ we find that the Ayoras operated a pirate radio station and apparently willfully and knowingly did or caused pirate radio broadcasting on each day between March 26, 2022 and September 24, 2022, resulting in a total of 184 days of apparent violations. Accordingly, the Commission finds that the Ayoras' actions—conservatively,⁵⁰ on a total of 184 days—constituted pirate radio broadcasting in apparent violation of section 511 of the Act.⁵¹

A. Joint and Several Liability

12. As discussed above, we find that the Ayoras are each apparently liable for willfully and knowingly doing or causing pirate radio broadcasting under section 511. The Commission has found in previous enforcement cases that joint and several liability is warranted where more than one party was responsible for a particular violation.⁵² We find that such joint and several liability is appropriate here, in light of the Ayoras' apparent support of and participation in the unauthorized station at issue.

B. Proposed Forfeiture

13. Section 511 of the Act authorizes the Commission to impose a forfeiture against any person that “who willfully and knowingly does or causes or suffers to be done any pirate radio broadcasting.”⁵³ In exercising our forfeiture authority, we 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.”⁵⁴ We may adjust a forfeiture downward for minor violations, good faith or voluntary disclosure, a history of overall compliance, or an inability to pay.⁵⁵

⁴⁸ See Radio Impacto 2, Quienes Somos, <http://impactosatelital.com/noticias> (last visited Dec. 7, 2022).

⁴⁹ See Lejos De Mi Patria, *Juanita Burbano entrevista a Angel & Cesar Ayora de La Radio 91.9fm 5c*, YouTube (July 30, 2012) <https://www.youtube.com/watch?v=vtii7HJV-pY> (last visited Dec. 7, 2022).

⁵⁰ We note that the advertising for the weekly programming is still active on the Radio Impacto 2 website indicating continued operation past the September 24, 2022 observation. See Radio Impacto 2, <http://impactosatelital.com/> (last visited Dec. 7, 2022).

⁵¹ 47 U.S.C. § 511(a), (h).

⁵² *Fabrice Polynice, Harold Sido and Veronise Sido, North Miami, FL*, Forfeiture Order, 33 FCC Rcd 6852 (2018) *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).

⁵³ 47 U.S.C. § 511(a).

⁵⁴ 47 CFR § 1.80(b)(10).

⁵⁵ *Id.*

14. Section 511 of the Act and section 1.80 of the Commission's rules authorize enhanced penalties for pirate radio broadcasting.⁵⁶ Under these sections, any person who willfully and knowingly does or causes or suffers to be done any pirate radio broadcasting shall be subject to a fine of not more than \$115,802 for each day during which the offense occurs, but not more than \$2,316,034.⁵⁷

15. Prior to the enactment of the PIRATE Act, the Commission imposed a base forfeiture of \$10,000 for operation of a pirate radio station in violation of section 301 of the Act for each violation or each day of a continuing violation.⁵⁸ While the PIRATE Act did not set a base forfeiture amount, the primary intent of the PIRATE Act is to increase financial penalties for pirate radio broadcasting.⁵⁹ Accordingly, we propose a base forfeiture of \$20,000 (or twice the prior base forfeiture level for pirate radio violations) for each of the 184 days that the Ayoras apparently willfully and knowingly violated section 511 of the Act for a total proposed base forfeiture of \$3,680,000.⁶⁰

16. Moreover, given the particular facts of this case, and consistent with the *Forfeiture Policy Statement*,⁶¹ we conclude that a significant upward adjustment is warranted. First, we find that the Ayoras' conduct was intentional. The Ayoras have been warned that their conduct was illegal, including having their equipment seized by the U.S. Marshals Service,⁶² but, nonetheless, the Ayoras chose to continue to operate Radio Impacto 2 in violation of the law.⁶³ Second, we find that an upward adjustment is warranted based on the Ayoras' history of prior violations of the Act discovered by Commission Agents from 2013 to 2020.⁶⁴ Based on the severity of the facts underlying these factors, we propose the maximum penalty of \$115,802⁶⁵ for each day of the 184 days during which the Ayoras operated their pirate radio station in 2022 for a total penalty of \$21,307,568. In applying the applicable statutory factors, we also consider whether there is any basis for a downward adjustment of the proposed forfeiture. We find none. Finally, we reduce the proposed penalty from \$21,307,568 to \$2,316,034 based on the statutory limits imposed by section 511(a) of the Act.⁶⁶ After applying section 1.80 of the Commission's

⁵⁶ 47 U.S.C. § 511; 47 CFR § 1.80(b)(6).

⁵⁷ 47 U.S.C. § 511(a)-(b); see 47 CFR § 1.80(b)(6) (setting the current inflation adjusted statutory maximum for a violation of 47 U.S.C. § 511(a) at \$2,316,034 and 47 U.S.C. § 511(b) at \$115,802); Amendment of Section 1.80(b) of the Commission's Rules, Adjustment of Civil Monetary Penalties to Reflect Inflation, Order, DA 22-1356, 2022 WL 18023008, at *5 (EB Dec. 23, 2022); see also Annual Adjustment of Civil Monetary Penalties to Reflect Inflation, 88 Fed. Reg. 783 (Jan. 5, 2023) (setting January 15, 2023, as the effective date for the increases).

⁵⁸ 47 CFR § 1.80(b).

⁵⁹ See S. Rep. No. 116-178, 1 (2019) ("The purpose of S. 1228, the Preventing Illegal Radio Abuse Through Enforcement Act or PIRATE Act, is to increase the financial penalties for pirate radio broadcasting.").

⁶⁰ See 47 U.S.C. § 511.

⁶¹ 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 17087,17101, para. 27 (1997) (Forfeiture Policy Statement), recons. denied, Memorandum Opinion and Order, 15 FCC Rcd 303 (1999); 47 CFR § 1.80(b)(10).

⁶² See *supra* para. 4. Luis Angel Ayora also received multiple NOUOs and the Commission issued a Forfeiture Order against him for \$20,000 in 2015 for operation of a pirate radio station. See *supra* para. 3; *Luis Angel Ayora, Queens New York*, Forfeiture Order, 30 FCC Rcd 6033 (EB 2015).

⁶³ See *supra* paras. 5, 7–9.

⁶⁴ See *supra* paras. 3–5; 47 U.S.C. § 301.

⁶⁵ 47 U.S.C. § 511(a); see 47 CFR § 1.80(b)(6); Amendment of Section 1.80(b) of the Commission's Rules, Adjustment of Civil Monetary Penalties to Reflect Inflation, Order, DA 22-1356, 2022 WL 18023008, at *5 (EB Dec. 23, 2022) (setting the current inflation adjusted statutory daily maximum for a violation of 47 U.S.C. § 511(a) at \$115,802); see also Annual Adjustment of Civil Monetary Penalties to Reflect Inflation, 88 Fed. Reg. 783 (Jan. 5, 2023) (setting January 15, 2023, as the effective date for the increases).

rules and the statutory factors, and consistent with the *Forfeiture Policy Statement*, we therefore propose a total monetary forfeiture of \$2,316,034 for which the Ayoras are apparently jointly and severally liable.⁶⁷

IV. CONCLUSION

17. We have determined that César Ayora and Luis Angel Ayora apparently willfully and knowingly did or caused pirate radio broadcasting in violation of section 511 of the Act. As such, César Ayora and Luis Angel Ayora are apparently jointly and severally liable for a forfeiture of \$2,316,034.

V. ORDERING CLAUSES

18. Accordingly, **IT IS ORDERED** that, pursuant to section 511 of the Communications Act of 1934, as amended, 47 U.S.C. § 511, and section 1.80 of the Commission's rules, 47 CFR § 1.80, César Ayora and Luis Angel Ayora are hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of Two Million Three Hundred Sixteen Thousand and Thirty-four Dollars (\$2,316,034) for willful and knowing violation of section 511 of the Act.⁶⁸

19. **IT IS FURTHER ORDERED** that, pursuant to section 1.80 of the Commission's rules, 47 CFR § 1.80, within thirty (30) calendar days of the release date of this Notice of Apparent Liability for Forfeiture, César Ayora and Luis Angel Ayora **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 paragraph 22 below.

20. In order for César Ayora and Luis Angel Ayora to pay the proposed forfeiture, César Ayora and Luis Angel Ayora shall notify the Office of the Field Director at field@fcc.gov of their intent to pay, whereupon an invoice will be posted in the Commission's Registration System (CORES) at <https://apps.fcc.gov/cores/userLogin.do>. Upon payment, César Ayora and Luis Angel Ayora shall send electronic notification of payment to the Office of the Field Director, Enforcement Bureau, Federal Communications Commission, at field@fcc.gov on the date said payment is made. Payment of the forfeiture must be made by credit card using CORES at <https://apps.fcc.gov/cores/userLogin.do>, ACH (Automated Clearing House) debit from a bank account, or by wire transfer from a bank account. 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:⁶⁹

- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. In the OBI field, enter the FRN(s) captioned above and the letters "FORF". In addition, a completed Form 159⁷⁰ or printed CORES form⁷¹ 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

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⁶⁶ 47 U.S.C. § 511(a). Section 511(a) limits the maximum forfeiture for pirate radio broadcasting to \$2,000,000 which has subsequently been adjusted for inflation to \$2,316,034. *See supra*. note 4.

⁶⁷ Any entity that is a "Small Business Concern" as defined in the Small Business Act (Pub. L. 85-536, as amended) may avail itself of rights set forth in that Act, including rights set forth in 15 U.S.C. § 657, "Oversight of Regulatory Enforcement," in addition to other rights set forth herein.

⁶⁸ 47 U.S.C. § 511.

⁶⁹ For questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone at 1-877-480-3201 (option #1).

⁷⁰ FCC Form 159 is accessible at <https://www.fcc.gov/licensing-databases/fees/fcc-remittance-advice-form-159>.

⁷¹ Information completed using the Commission's Registration System (CORES) does not require the submission of an FCC Form 159. CORES is accessible at <https://apps.fcc.gov/cores/userLogin.do>.

provide all required information in Form 159 or CORES may result in payment not being recognized as having been received. When completing FCC Form 159 or CORES, 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).⁷² 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 CORES at <https://apps.fcc.gov/cores/userLogin.do>. To pay by credit card, log-in using the FCC Username associated to the FRN captioned above. If payment must be split across FRNs, complete this process for each FRN. Next, select “Manage Existing FRNs | FRN Financial | Bills & Fees” from the CORES Menu, then select FRN Financial and the view/make payments option next to the FRN. Select the “Open Bills” tab and find the bill number associated with the NAL Acct. No. The bill number is the NAL Acct. No. with the first two digits excluded (e.g., NAL 1912345678 would be associated with FCC Bill Number 12345678). After selecting the bill for payment, choose the “Pay by Credit Card” option. Please note that there is a \$24,999.99 limit on credit card transactions.
- Payment by ACH must be made by using CORES at <https://apps.fcc.gov/cores/userLogin.do>. To pay by ACH, log in using the FCC Username associated to the FRN captioned above. If payment must be split across FRNs, complete this process for each FRN. Next, select “Manage Existing FRNs | FRN Financial | Bills & Fees” on the CORES Menu, then select FRN Financial and the view/make payments option next to the FRN. Select the “Open Bills” tab and find the bill number associated with the NAL Acct. No. The bill number is the NAL Acct. No. with the first two digits excluded (e.g., NAL 1912345678 would be associated with FCC Bill Number 12345678). Finally, 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.

21. Any request for making full payment over time under an installment plan should be sent to: Chief Financial Officer—Financial Operations, Federal Communications Commission, 45 L Street, N.E., Washington, D.C. 20554.⁷³ 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.

22. 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.⁷⁴ The written statement must be mailed to the Office of the Secretary, Federal Communications Commission, 45 L Street, N.E., Washington, D.C. 20554, ATTN: 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 the Office of the Field Director at field@fcc.gov.

23. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits the following documentation: (1) federal tax returns for the past three years; (2) financial statements for the past three years prepared according to generally

⁷² Instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

⁷³ See 47 CFR § 1.1914.

⁷⁴ 47 CFR §§ 1.16, 1.80(f)(3).

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. Inability to pay, however, is only one of several factors that the Commission will consider in determining the appropriate forfeiture, and we retain the discretion to decline reducing or canceling the forfeiture if other prongs of 47 CFR § 1.80(b)(10) support that result.

24. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture shall be sent by first class mail and certified mail, return receipt requested, to César Ayora and Luis Angel Ayora at the Radio Impacto 2 studio at 91-16 43rd Avenue Elmhurst NY, 11373.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary