

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

In the Matter of)	
)	
Eleuterio Lebron)	File No: EB-11-SJ-0028
)	NAL/Acct. No.: 201132680003
Guayama, PR)	FRN: 0020992913
)	

FORFEITURE ORDER

Adopted: March 6, 2012

Released: March 6, 2012

By the Regional Director, South Central Region, Enforcement Bureau:

I. INTRODUCTION

1. In this Forfeiture Order (Order), we issue a monetary forfeiture in the amount of one thousand five hundred dollars (\$1,500) to Eleuterio Lebron for willful and repeated violation of Section 301 of the Communications Act of 1934, as amended (Act).¹ The noted violations involved Mr. Lebron's operation of an unlicensed radio transmitter on the frequency 88.5 MHz in Guayama, Puerto Rico. The monetary forfeiture imposed reflects consideration of Mr. Lebron's inability to pay claim.

II. BACKGROUND

2. On September 21, 2011, the Enforcement Bureau's San Juan Office (San Juan Office) issued a Notice of Apparent Liability for Forfeiture (NAL)² to Mr. Lebron for his operation of an unlicensed radio transmitter on the frequency 88.5 MHz without the requisite Commission authorization. Mr. Lebron submitted a response to the NAL requesting cancellation or reduction of the proposed \$15,000 forfeiture, asserting that "it was not [his] intention to act against the law," and that he believed his transmitter was able to be used legally without a license.³ Mr. Lebron also asserted that he cannot afford to pay the forfeiture.

III. DISCUSSION

3. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Act,⁴ Section 1.80 of the Commission's rules (Rules),⁵ and the *Forfeiture Policy Statement*.⁶

¹ 47 U.S.C. § 301.

² *Eleuterio Lebron*, Notice of Apparent Liability for Forfeiture, 26 FCC Rcd 13070 (Enf. Bur., San Juan Office 2011) (NAL). A comprehensive recitation of the facts and history of this case can be found in the NAL and is incorporated herein by reference.

³ Letter from Eleuterio Lebron to William Berry, Resident Agent, San Juan Office, at 1 (Oct. 9, 2011) (on file in EB-11-SJ-0028) (NAL Response).

⁴ 47 U.S.C. § 503(b).

⁵ 47 C.F.R. § 1.80.

⁶ *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), *recons. denied*, 15 FCC Rcd 303 (1999) (*Forfeiture Policy Statement*).

In examining Mr. Lebron's response, Section 503(b)(2)(E) of the Act requires that the Commission 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 other such matters as justice may require.⁷ As discussed below, we have considered Mr. Lebron's response in light of these statutory factors, and find that a reduction of the forfeiture is justified.

4. As set forth in the *NAL*, agents from the San Juan Office determined that Mr. Lebron owned and controlled, and therefore operated, an unlicensed radio station on the frequency 88.5 MHz in Guayama, Puerto Rico on more than one day. In response to the *NAL*, Mr. Lebron does not deny that he owned and operated the station, but argues that he did not intend to violate the law. In support of his argument, Mr. Lebron explains that he purchased a Ramsey PX50 transmitter, which he claims was marketed as being Part 15 compliant.⁸ He states: "[I] believed to have a device certified by the FCC that complies with Part 15 of the FCC rules. I declare this as an error [on] my part since I thought it would give me the permit to operate a radio transmission that covers [P]art 15, well known as a license exempt item."⁹ He further states: "[it] wasn't my intention to harm anyone with this device, but [I was] only seeking the spiritual welfare and edification of my hometown habitants."¹⁰ The fact that Mr. Lebron may have mistakenly thought that his actions were consistent with the Commission's rules does not serve to justify or mitigate the violation in this instance. First, it is well established—for purposes of imposing a forfeiture penalty under Section 503 of the Act—that a willful violation can occur "irrespective of any intent to violate" the law.¹¹ Secondly, we find Mr. Lebron's argument unpersuasive, given that Mr. Lebron previously had been warned by our agents before the June 2011 violations that operation of his Ramsey PX50 transmitter was illegal and in violation of Section 301 of the Act.¹² Therefore, we affirm the findings in the *NAL* that Mr. Lebron willfully and repeatedly violated Section 301 of the Act by operating an unlicensed radio transmitter.

5. As part of his *NAL Response*, Mr. Lebron also submitted financial and other information in support of his inability to pay claim. With regard to an individual's or entity's inability to pay claim, the Commission has determined that, in general, gross revenues are the best indicator of an ability to pay a forfeiture.¹³ Having reviewed Mr. Lebron's submitted documentation, we conclude that the forfeiture should be reduced to \$1,500, an amount within the range that the Bureau has determined to be appropriate under the circumstances. However, we caution Mr. Lebron that a party's inability to pay is only one factor in our forfeiture calculation analysis, and not dispositive.¹⁴ We have previously rejected inability to

⁷ 47 U.S.C. § 503(b)(2)(E).

⁸ Mr. Lebron claims Ramsey Electronics materials stated that the device "complies with Part 15 of the FCC rule[s]," and that there are "no more worries about your station being forced off the air due to non-compliance." *NAL Response* at 1. However, Ramsey Electronics's webpage for the PX50 transmitter states: "The PX50 is FCC CERTIFIED for PARTS 2, 73, & 74! No more worries about your station being forced off the air due to non-compliance!" See <http://www.ramseyelectronics.com/cgi-bin/commerce.exe?preadd=action&key=PX50> (last visited Oct. 24, 2011). It does not appear that the certification disclosure included Part 15.

⁹ *NAL Response* at 1.

¹⁰ *Id.*

¹¹ 47 U.S.C. § 312(f)(1).

¹² See *Eleuterio Lebron*, Notice of Unlicensed Operation (Enf. Bur., San Juan Office rel. March 2, 2010).

¹³ See *PJB Communications of Virginia, Inc.*, Forfeiture Order, 7 FCC Rcd 2088, 2089 (1992) (forfeiture not deemed excessive where it represented approximately 2.02 percent of the violator's gross revenues); *Local Long Distance, Inc.*, Forfeiture Order, 16 FCC Rcd 24385 (2000) (forfeiture not deemed excessive where it represented approximately 7.9 percent of the violator's gross revenues); *Hoosier Broadcasting Corporation*, Forfeiture Order, 15 FCC Rcd 8640 (2002) (forfeiture not deemed excessive where it represented approximately 7.6 percent of the violator's gross revenues).

¹⁴ See 47 U.S.C. § 503(b)(2)(E) (requiring Commission to 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).

pay claims in cases of repeated or otherwise egregious violations.¹⁵ Therefore, future violations of this kind may result in significantly higher forfeitures that may not be reduced due to Mr. Lebron's financial circumstances.

IV. ORDERING CLAUSES

6. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.111, 0.204, 0.311, 0.314, and 1.80(f)(4) of the Commission's rules, Eleuterio Lebron **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of one thousand five hundred dollars (\$1,500) for violations of Section 301 of the Act.¹⁶

7. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules¹⁷ within thirty (30) calendar days of the release of this Order. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for enforcement pursuant to Section 504(a) of the Act.¹⁸ Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Account number and FRN referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank TREAS/NYC, and account number 27000001. For payment by credit card, an FCC Form 159 (Remittance Advice) must be submitted. When completing the FCC Form 159, enter the NAL/Account number in block number 23A (call sign/other ID), and enter the letters "FORF" in block number 24A (payment type code). Requests for full payment under an installment plan should be sent to: Chief Financial Officer -- Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554. Please contact the Financial Operations Group Help Desk with any questions regarding payment procedures at 1-877-480-3201 or Email: ARINQUIRIES@fcc.gov. Mr. Lebron shall also send electronic notification to SCR-Response@fcc.gov on the date said payment is made.

8. **IT IS FURTHER ORDERED** that a copy of this Order shall be sent by both First Class and Certified Mail, Return Receipt Requested, to Eleuterio Lebron at his address of record.

FEDERAL COMMUNICATIONS COMMISSION

Dennis P. Carlton
Regional Director, South Central Region
Enforcement Bureau

¹⁵ *Kevin W. Bondy*, Forfeiture Order, 26 FCC Rcd 7840 (Enf. Bur., Western Region 2011) (holding that violator's repeated acts of malicious and intentional interference outweigh evidence concerning his ability to pay); *Hodson Broadcasting Corp.*, Forfeiture Order, 24 FCC Rcd 13699 (Enf. Bur. 2009) (holding that permittee's continued operation at variance with its construction permit constituted an intentional and continuous violation, which outweighed permittee's evidence concerning its ability to pay the proposed forfeitures).

¹⁶ 47 U.S.C. §§ 301, 503(b); 47 C.F.R. §§ 0.111, 0.204, 0.311, 0.314, 1.80(f)(4).

¹⁷ 47 C.F.R. § 1.80.

¹⁸ 47 U.S.C. § 504(a).